

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington County
Court of

The Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

Vincent Thomas Shivers,

APPELLANT.

APPELLATE CASE NO. 2022-000425

RECORD ON APPEAL – Volume III

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JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | your motion in my hand. But I'm just telling you
2 | between the two and the probative value if I weigh
3 | it, it is not the murder weapon. And there -- and
4 | the State has conceded to that. And they're --
5 | it's circumstantial evidence. The jury could do
6 | with it what they want to do with it.

7 | MR. SWERLING: I wasn't trying to
8 | continuing to argue. We just wanted it on the
9 | record.

10 | THE COURT: But the 403, yes, you're
11 | protected and it is noted for the record.

12 | (WHEREUPON, the jury enters the
13 | courtroom at 4:15 p.m.)

14 | THE COURT: All right. Mr. Foreman, is
15 | the jury ready?

16 | THE FOREMAN: We are.

17 | THE COURT: Okay. I'm sorry, we've got
18 | to wait on Mr. Swerling.

19 | MS. BARBIER: Your Honor, we can
20 | proceed. This is my witness.

21 | THE COURT: Oh, okay. All right. Call
22 | your next witness.

23 | MS. MCMENAMIN: Yes, Your Honor. The
24 | State calls Jesse Dean.

25 | JESSE DEAN,

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | being first duly sworn, was examined and testified
2 | as follows:

3 | THE CLERK: If you'll have a seat over
4 | there, please. State your name and spell your last
5 | for the record, please.

6 | MR. DEAN: My name is Jesse Dean,
7 | that's D-E-A-N.

8 | DIRECT EXAMINATION

9 | BY MS. MCMENAMIN:

10 | Q. Good afternoon, Detective Dean. Can
11 | you tell the jury where you're from?

12 | A. I'm from Toronto Ontario, Canada.

13 | Q. And can you tell the jury where you're
14 | currently employed?

15 | A. I'm employed by the Toronto Police
16 | Service and I'm currently assigned to the fugitive
17 | squad.

18 | Q. What is the fugitive squad?

19 | A. The fugitive squad is a task force that
20 | is made up of Toronto police officers and two
21 | immigration officers and our mandate is to
22 | investigate files that are related to wanted
23 | people. And there's typically two types of files
24 | that we investigate. And that is somebody with a
25 | foreign national who is wanted in their

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | jurisdiction and that has fled to the Greater
2 | Toronto Area. And then the other would be a
3 | Canadian who has committed an offense abroad and
4 | that has come back to the Toronto area and is
5 | wanted in that jurisdiction.

6 | Q. In your position in that fugitive squad
7 | at TPS, is that detective constable?

8 | A. Yes. So my rank is detective constable
9 | and I perform the duties of an investigator in
10 | plain clothes.

11 | Q. Now, how long have you been working in
12 | law enforcement, Detective Dean?

13 | A. I've been a member of the Toronto
14 | Police Service for just over 16 years.

15 | Q. And is that your law enforcement
16 | experience as well?

17 | A. Yes, it is.

18 | Q. Detective Dean, do you recall being
19 | asked by the United States Marshal Service to
20 | assist in the apprehension of the Defendant,
21 | Vincent Shivers on September 5th of 2019?

22 | A. Yes, I do.

23 | Q. And how did you come to assist in this
24 | investigation?

25 | A. I came to assist in this investigation

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 at 4:08 p.m. When I received a phone call from a
2 United States Marshal's officer named Bill Bolden.
3 And he advised me that a suspect who was wanted for
4 murdering his wife in South Carolina had recently
5 used his credit card at a hotel near the airport
6 known as the Marriott hotel. And he was requesting
7 that myself and my team assist in locating that
8 individual.

9 Q. Assisting locating him?

10 A. Yes, that's right.

11 Q. And were you provided any sort of
12 identifying information for the individual you were
13 looking for?

14 A. Yes, I was. I received the information
15 that indicated that the person of interest in
16 regards to this investigation was a person named
17 Vincent Shivers with a date of birth of 1969, May
18 26th. He was described as a male white, 5'10", 241
19 pounds. And within that information, I received a
20 picture of him as well.

21 Q. And you said that you received
22 information that he might be at a Marriott hotel.
23 Can you tell us where that is?

24 A. Right. So the Airport Marriott hotel
25 is a hotel that's in the northwest end of the city

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 in close proximity to Pearson International
2 Airport.

3 Q. And is that in the Toronto area?

4 A. It's in the Greater Toronto Area, yes.

5 Q. And you're familiar with that area?

6 A. Yes, I am.

7 Q. From the hotel to the airport about how
8 far a drive is that give or take traffic?

9 A. It would be approximately ten minutes.

10 Q. And did you go to that airport?

11 A. Yes --

12 Q. That hotel and what did you find there?

13 A. Right. So upon receiving information,
14 myself and other members of my team went to that
15 hotel. And eventually I received information from
16 another officer on my team that Mr. Shivers had
17 already checked out of the hotel and the vehicle
18 that he was believed to be operating was no longer
19 at the hotel.

20 Q. And what kind of vehicle was that?

21 A. It was a black Ford F-150 pickup truck
22 with a South Carolina license plate of KDD528.

23 Q. Once you realized he was no longer at
24 this Marriott hotel, where did your investigation
25 take you? What was your next lead?

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. From there, I received information that
2 indicated that Mr. Shivers had purchased a \$1400
3 airline ticket on flight on an Air Canada plane.
4 And from there, myself and other members of my team
5 made our way to Pearson International Airport.

6 Q. Did you have any information at the
7 time where this ticket would be taking him?

8 A. So, eventually, I learned that the
9 ticket he had purchased was for a flight that was
10 departing to London, England out of Terminal number
11 1 at Gate E76.

12 Q. Did you go to that gate?

13 A. Yes, I did.

14 Q. What did you find when you got to there
15 or what did you observe when you got to the gate
16 for this flight to London?

17 A. So at 6:09 p.m. that day, myself and
18 other members on my team arrived at that area back
19 gate and I observed that people were lining up and
20 there was a large crowd that was waiting to board
21 that flight. And we kind of fanned out a little
22 bit and tried to make observations of the people
23 who were in that crowd in an attempt to locate Mr.
24 Shivers.

25 One of the officers on my team

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 indicated that he had a visual on Mr. Shivers and
2 he indicated where he was to me and I saw him and I
3 was able to confirm that it was Mr. Shivers.

4 Q. When you located him was he placed
5 under arrest?

6 A. Yes, he was.

7 Q. What was he placed under arrest for?

8 A. So he was arrested on the strength on a
9 Canada wide immigration warrant that had been
10 issued as a result of him being a danger to the
11 public and also him being unlikely to appear for a
12 administer's hearing.

13 Q. Do you recall if he was advised at that
14 time that this was a Canadian warrant or was that
15 readily obvious?

16 A. Yes, he was advised it was a Canadian
17 warrant.

18 Q. And can you sort of explain to us if
19 there's any difference between this type of warrant
20 and the typical warrant we would think of here in
21 the United States?

22 A. Sure. So this type of immigration
23 warrant is a procedural type of warrant meaning
24 that if somebody gets arrested on this type of
25 warrant, usually the arrest in and of itself

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 entails sort of the end of the investigation. You
2 wouldn't need any additional evidence after that
3 and it wouldn't go to a criminal court the way a
4 criminal type offense would.

5 Q. So it's not a criminal offense?

6 A. No, it's not.

7 Q. Do you recall what time the Defendant
8 was arrested?

9 A. He was arrested at 8 -- sorry. He was
10 arrested at 6:10 p.m.

11 Q. Once he was arrested, was the Defendant
12 placed in handcuffs or restrained in any sort of
13 way?

14 A. Yes, he was. So once he was arrested,
15 myself and another officer handcuffed him and he
16 was subsequently searched incident to arrest.

17 Q. While he was being detained and advised
18 of the warrant, what do you recall about his
19 demeanor?

20 A. That he was calm. That he did not
21 fight with us or resist arrest in any way. And it
22 was a -- an arrest without incident.

23 Q. Now, you said he was -- were you saying
24 he was searched after being arrested?

25 A. Yes, he was.

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Can you tell us if you found anything
2 on his person when you searched him incident to
3 arrest?

4 A. Yes. I found a set of keys and a cell
5 phone.

6 Q. Did you collect those items?

7 A. Yes, I did.

8 Q. So those were seized?

9 A. Yes.

10 Q. Now, you're at the airport, do you
11 recall whether or not the Defendant had luggage on
12 him when he was arrested?

13 A. Yes, he did. He had a carry-on piece
14 of luggage in hand.

15 Q. Was that seized as well?

16 A. Yes, it was.

17 Q. And after arresting the Defendant at
18 the gate, where did you go from there?

19 A. So after he was arrested, we were en
20 route out of the airport to one of our transport
21 vehicles and he was eventually meant to be
22 transported back to a CBSA facility, CBSA stands
23 for Canada Border Services Agency to be processed
24 on the warrant.

25 Q. Canadian warrant?

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes.

2 Q. Okay. As you're walking through the
3 airport with the Defendant, how many of you are
4 there? How many officers?

5 A. So there was four officers. There was
6 myself, there was Officer Douglas, there was also
7 Officer Frigon, and there was Officer Collier.

8 Q. Okay. And you're all walking together
9 with the Defendant?

10 A. Yes.

11 Q. Are any of you communicating with each
12 other?

13 A. We were likely talking amongst
14 ourselves, yes.

15 Q. And "we," are you referring to just law
16 enforcement?

17 A. Yes.

18 Q. Okay. Do you recall what you may have
19 been talking about if anything when you were
20 exiting the airport?

21 A. Yes. So upon exiting the airport, we
22 were having a conversation amongst ourselves about
23 making efforts to locate the black F-150 pickup
24 truck that Mr. Shivers was believed to be driving.

25 Q. And was this conversation just between

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 law enforcement?

2 A. Yes.

3 Q. Were you attempting to communicate with
4 the Defendant in any way?

5 A. No.

6 Q. Were you attempting to elicit
7 information from the Defendant in any way?

8 A. No, I was not.

9 Q. Okay. And while you're having the
10 conversation about the F-150, does anything of note
11 occur?

12 A. Yes. So Mr. Shivers indicated that the
13 truck was parked on level 6 near pole I29 at the
14 airport parking garage.

15 Q. And how did he indicate that you?

16 A. He just said it to us.

17 Q. Okay. So sort of in the midst of your
18 conversation?

19 A. Yes.

20 Q. Detective Dean, you said earlier that
21 your goal was apprehension?

22 A. Yes.

23 Q. To -- was maybe locate was the word
24 that you used?

25 A. Yes.

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Was your goal to interrogate the
2 Defendant?

3 A. No.

4 Q. Were you trying to ask him questions?

5 A. No.

6 Q. And he offers up this information about
7 the truck?

8 A. Yes.

9 Q. Were you ever able to locate the truck?

10 A. Yes, we were.

11 Q. And where was the truck?

12 A. The truck was located in the Pearson
13 parking garage on level 6 near pole I29.

14 Q. And where did the Defendant say it
15 would be located?

16 A. On level 6 near pole I29.

17 Q. Now, after he makes this statement to
18 you which -- how would you describe it? The manner
19 of the statement?

20 A. He just said it to us.

21 Q. Voluntary; is that fair?

22 A. Yes. In just a calm normal manner.

23 Q. After that, what do you do? What's
24 going on?

25 A. So at that point, I was assisting in

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 loading Mr. Shivers into our transport vehicle
2 which was just an unmarked black Dodge Caravan, the
3 type with the sliding door on the side. And he was
4 seated in the back passenger -- the rear most
5 passenger side seat. And I was -- I had to get
6 into the van to put the seatbelt on him.

7 Q. Let me stop you there, Detective Dean.
8 Sorry to interrupt you. When you say get in there
9 to put the seatbelt on him, can you kind of
10 describe a little more of what the vehicle was like
11 and where you two were in juxtaposition to each
12 other?

13 A. Right. And so Mr. Shivers was seated
14 in the rear most passenger bench seat at the back
15 of the caravan. And for me to get in there as well
16 to help him, I was on the seat that was just in
17 front of him and I had to reach over to grab the
18 seatbelt and connect it.

19 Q. And about how long had you been in the
20 vehicle at that point?

21 A. Maybe about 15, 20 seconds.

22 Q. And before we go any further, I do want
23 to back up just a little bit. You said you could
24 able to locate the truck. Did anyone assist you
25 with that?

JESSE DEAN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Officer Frigon.

2 Q. Okay. And when you found the truck,
3 what if anything did you do to it?

4 A. We held it there until it could get
5 towed away.

6 Q. Okay. Did you search the truck?

7 A. No, we did not.

8 Q. Did you look at anything inside of it?

9 A. No, we did not.

10 Q. So coming back to sort of present time,
11 you said you were assisting the Defendant with the
12 seatbelt so that he could be transported?

13 A. That's right.

14 Q. What happens then?

15 A. At that point, he said to me, listen,
16 be careful, there's two guns in the truck. One in
17 the middle console, it's loaded and another in an
18 old briefcase in the backseat also loaded. One's a
19 Kimber .45 and one's an XT9. I was going to eat
20 one in Niagara falls for what I'd done.

21 Q. Had you asked him questions at this
22 point?

23 A. No, I had not.

24 Q. Were you communicating with him?

25 A. No, I was not.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Were there conversations between
2 officers occurring at this point?

3 A. No, there was not.

4 Q. It was just you and him?

5 A. Yes.

6 Q. Were you doing anything to try and
7 elicit information from him?

8 A. No, I was not.

9 Q. Did you threaten him?

10 A. No.

11 Q. Were any promises made?

12 A. No, there were not.

13 Q. And, Detective Dean, do you know what
14 time this statement was made?

15 A. It was made at 6:29 p.m.

16 Q. And how do you know that, Detective
17 Dean?

18 A. Because I wrote down the time on the
19 paper in which I transcribed what he said.

20 Q. And whose words were you using with
21 what he said?

22 A. His words.

23 Q. And this statement was made on what
24 date?

25 A. On September 5, 2019.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 MS. MCMENAMIN: One moment to confer,
2 Your Honor. Nothing further for this witness at
3 the time, Your Honor. Thank you.

4 THE COURT: Thank you. Ms. Barbier?

5 MS. BARBIER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. BARBIER:

8 Q. Good afternoon, Detective Dean.

9 A. Good afternoon.

10 Q. So, Detective Dean, you testified
11 you've been in law enforcement approximately 16
12 years; is that right?

13 A. Yes.

14 Q. And I would imagine that you have been
15 trained somewhere in how to do detain a subject; is
16 that right?

17 A. Yes.

18 Q. Okay. You've been trained on how to
19 advise the subject on their rights; is that right?

20 A. Yes.

21 Q. Okay. And you've been trained on the
22 Canadian rights; correct?

23 A. Yes.

24 Q. And you're aware prior to making this
25 arrest, in fact, when you were informed by the US

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 | Marshal Service about the request they gave you,
2 | you were informed that Mr. Shivers is an American
3 | citizen; correct?

4 | A. Yes.

5 | Q. Okay. And you are somewhat familiar, I
6 | think, with what we call Miranda Rights in the
7 | United States; correct?

8 | A. I know what they are, yes.

9 | Q. You know that United State's citizens
10 | are entitled to know that they have a right to
11 | remain silent; correct?

12 | A. Yes.

13 | Q. And they have a right to an attorney;
14 | correct?

15 | A. Yes.

16 | Q. And they have a right to know that
17 | anything they say could be used against them in a
18 | court of law; correct?

19 | A. Right.

20 | Q. Okay. And so you've also been trained
21 | on how to question a witness; correct?

22 | A. Yes.

23 | Q. And you've been trained on how to
24 | convince someone in the course of an investigation
25 | to cooperate with law enforcement; correct?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. I wouldn't say I'm trained to convince
2 somebody. I think by acting in a professional
3 manner, somebody may want to cooperate if they so
4 choose so -- to do so.

5 Q. You prefer when people cooperate;
6 correct?

7 A. Yeah. For your investigation you hope
8 that people cooperate, absolutely.

9 Q. Right. That makes your life easier as
10 an officer; correct?

11 A. Yes.

12 Q. Okay. And so you had discussions with
13 the US Marshal Bill Bolden I think you said his
14 name was about the crime that they were
15 investigating in South Carolina; correct?

16 A. I had a very brief discussion with him,
17 yes.

18 Q. They told you that this was a murder
19 investigation; correct?

20 A. That's right.

21 Q. They told you that Mr. Shivers was a
22 suspect in this murder investigation?

23 A. Yes.

24 Q. Okay. And they told you that it
25 involved a firearm; is that right?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. Yes.

2 Q. Okay. And they talked to you about
3 apprehending and detaining Mr. Shivers; correct?

4 A. Initially they asked us to locate him.
5 Our ability to place him under arrest only came
6 about as a result of learning that the warrant had
7 been issued by Canada Border Services Agency.

8 Q. Right. The Canadian warrant was issued
9 as a result of the United States asking you to help
10 locate Mr. Shivers; is that correct?

11 A. I'm not -- I don't know where the
12 warrant -- or who issued the warrant -- I'm sorry.
13 Can you rephrase your question or say it again?

14 Q. Your Canadian immigration warrant was
15 issued as a result of the United States Marshal
16 Service asking you to assist in the apprehension of
17 Mr. Shivers; is that correct?

18 A. I think the warrant that issued is he
19 had violated one of our immigration laws. That's
20 my understanding.

21 Q. But it was brought to your attention by
22 the US Marshals; correct?

23 A. Yes.

24 Q. And but for the US Marshals having
25 contacted you there would not have been a Canadian

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 | warrant; correct?

2 | A. I'm not sure. I didn't issue it, so I
3 | don't know.

4 | Q. Okay. And in the course of your
5 | conversations with the authorities of the United
6 | States, they also asked you to attempt to get a
7 | statement from Mr. Shivers, didn't they?

8 | A. Later on down the road, yes, they did.

9 | Q. Okay. Now, you testified that you took
10 | part in Mr. Shivers's arrest; is that right?

11 | A. Yes.

12 | Q. Okay. And as I understand it on that
13 | day, you were not wearing a body camera; is that
14 | correct?

15 | A. No, I was not. I was in plain clothes.

16 | Q. And you're aware in the State of South
17 | Carolina it's a law that law enforcement officers
18 | have to wear body cameras, did you know that?

19 | A. No, I did not.

20 | Q. In fact, Toronto is now -- the police
21 | department is also implementing a law that requires
22 | police officers to wear body cameras; aren't they?

23 | A. Yes. So Toronto Police Service is
24 | implementing a plan so that officers who are in
25 | uniform do wear body cameras, that's correct, yes.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. But you were not wearing a body camera
2 on the day that Mr. Shivers was arrested, were you?

3 A. So I was not. Plain clothes officers
4 at this point do not wear body cameras.

5 Q. But you were carrying cell phones;
6 correct?

7 A. Yes, I had my cell phone.

8 Q. Okay. And you had the ability if you
9 wanted to to record that encounter on your phone,
10 didn't you?

11 A. I suppose so. I can tell you that I've
12 never in my career or seen any other officer pull
13 out his cell phone during the course of an arrest
14 and video tape it, so.

15 Q. Well, that's one of the reasons that
16 body cameras are being implementing, isn't it?

17 A. That's one --

18 Q. Transparency with the public now, they
19 can see what happens in an actual law enforcement
20 encounter; correct.

21 A. Yes, that's one of the reasons. Yes.

22 Q. Correct. And so in the United States
23 there's a show on TV called Cops, have you ever
24 seen that?

25 A. Yes.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. And that actually shows real
2 life footage of what happens when someone gets
3 arrested, doesn't it?

4 A. Yes.

5 Q. Okay. Now, there are also security
6 cameras in the Toronto Airport, aren't there?

7 A. Right.

8 Q. And you actually obtained a still photo
9 of Mr. Shivers in the Toronto Airport, didn't you?

10 A. No, I did not.

11 Q. Did someone on your team?

12 A. They may have.

13 Q. Okay. Well, you had the ability to
14 obtain the actual videotape of the arrest of Mr.
15 Shivers, didn't you?

16 A. Yeah, I suppose so.

17 Q. And you chose not to do that, didn't
18 you?

19 A. No, we did not get it. The arrest was
20 an uneventful one. I'm not sure how having it on
21 video would have been useful or made much sense
22 really.

23 Q. Well, if we had a videotape of this
24 encounter, we would know whether or not if any
25 questions were asked of Mr. Shivers, wouldn't we?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. I guess so. I don't think there would
2 be any audio however.

3 Q. Okay. Now, you testified that when Mr.
4 Shivers was approached, he was placed under arrest;
5 correct?

6 A. Yes.

7 Q. And is it your testimony that he was
8 told that he was a person of interest in a domestic
9 issue in the United States?

10 A. No, I didn't hear that.

11 Q. Okay. Was he told that he was being
12 arrested pursuant to a Canadian warrant?

13 A. Yes.

14 Q. Okay. And was he told anything about
15 having been arrested for anything to do with a
16 murder in South Carolina?

17 A. No.

18 Q. Okay. So four officers approach Mr.
19 Shivers in the Toronto Airport and they say nothing
20 to him other than you are being arrested on a
21 Canadian immigration warrant; is that your
22 testimony?

23 A. Yes.

24 Q. Okay. And Mr. Shivers did not have a
25 reaction to that; is that right?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. Being arrested for the immigration
2 warrant?

3 Q. Yeah, did he have any questions?

4 A. Not that I heard.

5 Q. So you didn't hear him say, what do you
6 mean an immigration warrant? What is this about?

7 A. I don't recall that.

8 Q. He didn't say anything like that?

9 A. Not to me.

10 Q. What do you recall him saying?

11 A. I don't recall him saying anything.

12 Q. He didn't ask you any questions?

13 A. I wasn't speaking to him, so, no, he
14 didn't ask any questions.

15 Q. You were standing next to him, weren't
16 you?

17 A. Yep.

18 Q. And is it your testimony to these
19 ladies and gentlemen of the jury that Mr. Shivers
20 said nothing?

21 A. If he said anything, I don't recall
22 what it was and that conversation wasn't between me
23 and him.

24 Q. Okay. Did you witness Mr. Shivers
25 being read his Canadian Rights?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. Yes, I remember that.

2 Q. Okay. And those rights include a right
3 to know why you're being arrested; right?

4 A. Yeah. So when you're arrested by
5 immigration, they advise you of the reason for the
6 arrest, yes, that you're allotted the right to
7 speak to a lawyer and if you want they will notify
8 your consulate.

9 Q. And was Mr. Shivers apprised of that
10 information?

11 A. Yes.

12 Q. And according to you, he says nothing?

13 A. I didn't hear what he said. I wasn't
14 listening to what he was saying.

15 Q. Well, you're standing next to him and
16 you're telling this jury that Mr. Shivers's
17 reaction was he said nothing?

18 A. I don't recall what his reaction was.

19 Q. He didn't say I want to speak with a
20 lawyer?

21 A. I don't recall that.

22 Q. Okay. He didn't say, I don't
23 understand what this is about?

24 A. No, I don't recall that.

25 Q. Do you recall anybody on your team

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 | saying to him, we just have a few question to ask
2 | you and we need you to cooperate?

3 | A. No, I don't.

4 | Q. You don't recall that?

5 | A. Again, the conversation wasn't between
6 | me and him.

7 | Q. But you acknowledge you were the one
8 | who handcuffed him; correct?

9 | A. Yes.

10 | Q. And you were the one who patted him
11 | down; correct?

12 | A. Yes.

13 | Q. And you were standing as close to him
14 | as anybody in that airport; correct?

15 | A. Right.

16 | Q. And your testimony to this jury is that
17 | he said nothing?

18 | A. He may have said something, but I don't
19 | recall what it was. And, again, the conversation
20 | was happening between the immigration officer that
21 | would have arrested him, so that was their
22 | conversation, not mine.

23 | Q. Is it your testimony to this jury that
24 | not one officer who's involved in his arrest asked
25 | him one question related to the murder in South

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Carolina?

2 A. No.

3 Q. Is that your testimony?

4 A. Yes.

5 Q. Nobody asked him any questions?

6 A. No.

7 Q. So he was arrested in silence after his
8 Canadian Rights were read to him; is that your
9 testimony?

10 A. He was arrested by the immigration
11 officer who advised him of what he advised him of,
12 but I certainly didn't question him about anything
13 to do with South Carolina.

14 Q. Okay. Is it your testimony that there
15 was no conversation between Mr. Shivers and any of
16 the officers involved in his arrest 'is that your
17 testimony?

18 A. Yes, we didn't speak to him.

19 Q. Okay. Now, and you all are trained
20 investigators; is that right?

21 A. Yes.

22 Q. Your job is to ask questions; is that
23 right?

24 A. In this circumstance, once he was
25 placed under arrest, we had found him and arrested

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 him, we were more or less -- our portion of that
2 was done with then.

3 Q. Mr. Shivers was at that point in time
4 in custody, was he not?

5 A. Yes, he was.

6 Q. And you as a trained detective are
7 aware that if you did ask him questions and he was
8 in custody, he should have been read his Miranda
9 Rights; isn't that right?

10 A. If he had been arrested on a criminal
11 charge then that would have applied to him at that
12 point, yes.

13 Q. Correct. So if you had been asking him
14 questions and you had engaged in conversations with
15 him, he would have been entitled his Miranda
16 Rights; correct?

17 A. Again, if I had arrested him for a
18 criminal code violation then absolutely I would
19 have had to give him his right to counsel.

20 Q. Right. And he wasn't read his Miranda
21 rights, was he?

22 A. He was not. First of all, I've never
23 read anybody their Miranda Rights because that's an
24 American law enforcement. I think we call it
25 rights to counsel. And if he had been arrested as

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 a result of a criminal code violation then
2 certainly he would have been advised of his rights
3 to counsel.

4 Q. Okay. But if you tell this jury or you
5 testify in this courtroom that he was asked any
6 questions, that would be a problem for you all,
7 wouldn't it, because he wasn't read his rights;
8 correct? And you're aware of that?

9 A. Yes.

10 Q. Yeah. So you're telling this jury that
11 at 6:10 he was arrested and it took about 20
12 minutes to get him to that transport vehicle;
13 didn't it?

14 A. Right.

15 Q. And you're telling this jury that for
16 20 minutes, four officers walked him down the
17 terminal in the Toronto Airport in silence; is that
18 right?

19 A. Yes, there was --

20 Q. Nobody said we're here because you
21 murdered your wife? No one said that?

22 A. No.

23 Q. Okay. Nobody said -- asked him any
24 questions about a murder in South Carolina; is that
25 right?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. No.

2 Q. So as far as he knows for 20 minutes
3 he's been walked down the terminal in the Toronto
4 Airport because there's an immigration violation in
5 Canada; is that right?

6 A. Yes.

7 Q. Okay. And then your testimony was,
8 when he gets to the car, he just blurts out, I
9 wanted to take one for what I've done; is that your
10 testimony?

11 A. Yes, that's what he said.

12 Q. Okay. And that doesn't have anything
13 to do with an immigration violation, does it? Is
14 that your testimony?

15 A. No, I don't think it had anything to do
16 with immigration violation.

17 Q. So he doesn't even know why he's being
18 arrested, but according to you, he's blurted out
19 this statement; is that right?

20 A. I think he understood what he was being
21 arrested for. I don't think he had -- he
22 definitely knew.

23 Q. You are supposed to ensure that a
24 subject understands the charges against them;
25 correct?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. Yes.

2 Q. Okay. And how do you do that if you
3 don't ask any other questions?

4 A. I wasn't the one who arrested him.
5 There was another -- it was an immigration officer
6 who arrested him, so that was a conversation that
7 they would have had with him.

8 Q. And you would have been right next to
9 him; right?

10 A. Yes.

11 Q. Okay. So as I understand it, you took
12 from his possession his car keys; is that right?

13 A. Yes.

14 Q. And a cell phone?

15 A. Yes.

16 Q. Okay. And are you aware of the day
17 that Mr. Shivers was found to have crossed the
18 border into Canada?

19 A. Yes.

20 Q. What day is that?

21 A. The information that I received
22 indicated that he crossed on September 3rd at
23 1:14 p.m.

24 Q. And the day of his arrest was September
25 5th; correct?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. Yes.

2 Q. And he had approximately \$3,000 in cash
3 on him; is that right?

4 A. Yes.

5 Q. And did you talk that from his person?

6 A. No, I did not.

7 Q. But you also indicated on direct
8 examination that he told you where his car was
9 parked; is that right?

10 A. Yes, that's right.

11 Q. And you're telling this jury that
12 nobody on your team asked him where his car was
13 parked, he just blurted it out?

14 A. Yep. We didn't ask him. Like I said,
15 there had been a conversation amongst the officers
16 about making efforts to locate his vehicle and I
17 assume he had overheard that conversation and he
18 just told us.

19 Q. But it would be logical for you all to
20 have asked him where he parked his car; correct, so
21 you didn't have to wander around the Toronto
22 Airport looking for his car; right?

23 A. Whether he told us or not, it really
24 wasn't a difficult task to find his car. And it
25 wouldn't have been if he had not said anything.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. And so you're telling this jury
2 that it would have been easy to go through the
3 Toronto Airport's parking garage and find his car
4 as quickly as you found it without him telling you?

5 A. It wouldn't have taken that long. And
6 there was no hurry finding it. A large black F-150
7 with a non Ontario license plate would have stuck
8 out and not been very difficult to find, no.

9 Q. So this statement that you claim Mr.
10 Shivers made, you made some notes about that; is
11 that correct?

12 A. Yes.

13 Q. Only -- your notes, Detective Dean, are
14 supposed to be chronological; correct?

15 A. In a perfect world, yes.

16 Q. Okay. And so your notes on Court's
17 Exhibit No. 23 --

18 MS. BARBIER: And I want to move these
19 into evidence, Your Honor, after I have him
20 authenticate them.

21 Q. So, Detective Dean, are those your
22 notes from September 5th of 2019?

23 A. Yes.

24 Q. Okay. And if you will turn to the
25 second page of it --

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 MS. BARBIER: I move these into
2 evidence, Your Honor.

3 THE COURT: Any objection?

4 MS. MCMENAMIN: No objection, Your
5 Honor.

6 THE COURT: Okay.

7 (WHEREUPON, Defendant's Exhibit Number
8 1 was entered)

9 Q. So on the second page of your notes at
10 16:08, I guess that's military time for 4:08; is
11 that right?

12 A. Yes.

13 Q. It says receive call from USMS, that's
14 US Marshal Service Bill Bolden; is that right?

15 A. Yes.

16 Q. It says, ADV. A suspect wanted for
17 murdering his wife in South Carolina recently used
18 his credit card at the Marriott hotel in Toronto.
19 Bolden requests immediate assistance in locating
20 the suspect; do you see that?

21 A. Yes.

22 Q. So that's how you learned that this was
23 a murder investigation; correct?

24 A. Yes.

25 Q. And so, again, when you arrested Mr.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Shivers on this immigration warrant, you understood
2 this was a murder investigation; correct?

3 A. I understood that he was a suspect for
4 a murder in South Carolina, yes. For me, it wasn't
5 a murder investigation. It was a -- we are tasked
6 to locate him and arrest him if we have the power
7 to do so. If there had not been an immigration
8 warrant, we would not have been able to arrest him.
9 Because a warrant in another country would have no
10 power in Canada.

11 Q. Right. So as a result of the request
12 you received from the US Marshal Service, an
13 immigration warrant was issued; correct?

14 A. I don't know necessarily the reasoning
15 behind how that warrant got issued because I didn't
16 issue it, so I'm not sure.

17 Q. Are you telling this jury it was a
18 coincidence that there was an immigration warrant
19 issued because you were asked to participate in a
20 murder investigation?

21 A. Again, I didn't issue the warrant, so
22 I'm not sure.

23 Q. Okay. Now, let's look at 18:10, if you
24 will, in your notes, that's 6:10?

25 A. Yes.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. And it says that is the time that you
2 arrested Mr. Shivers; is that correct?

3 A. Yes.

4 Q. Okay. And you put in quotes in that
5 entry and it says, Shivers says "the truck is
6 parked on level 6 by pole I29," do you see that?

7 A. Yes.

8 Q. Okay. You took the time to quote Mr.
9 Shivers right in that entry; correct?

10 A. Yes.

11 Q. Okay. And I imagine that Toronto
12 Police Department has a policy of keeping
13 chronological notes; is that right?

14 A. Yes. And you -- it's always best
15 practice to keep chronological notes, yes.

16 Q. And it says at 18:29, that's 6:29,
17 that's 20 minutes later; correct?

18 A. Yes.

19 Q. So that indicates it took you 20
20 minutes to get him from the terminal in the Toronto
21 Airport to the transport vehicle in the garage;
22 correct?

23 A. Yes.

24 Q. So that's the 20 minutes you all walked
25 in silence; is that right?

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 A. There very well could have been
2 conversations amongst the officers, but we weren't
3 talking to him.

4 Q. That's the 20 minutes that you all
5 didn't bother to ask Mr. Shivers one question; is
6 that right?

7 A. Yes.

8 Q. Okay. Now, it says under 18:29,
9 assists Shivers into the backseat of DC Douglas
10 black van. Shivers volunteers information -- info
11 that two guns are in the Ford F-150 truck and
12 further states he was going to shoot himself. Do
13 you see that?

14 A. Yes.

15 Q. Okay. So you wrote down at 18:29 that
16 Mr. Shivers stated that he was going to shoot
17 himself; is that right?

18 A. Right.

19 Q. Okay. And the next entry is 19:25 in
20 the parking garage and you locate the black Ford
21 F-150?

22 A. Right.

23 Q. Okay. And that's the chronological
24 order of your notes; correct?

25 A. Yes.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. And there's no indication in these
2 notes that Mr. Shivers says I was going to eat one
3 in Niagara falls for what I'd done; is there?

4 A. Right. So the note I made at about
5 what Mr. Shivers had said to me, I wrote that note
6 very close to the time that he had said that
7 statement. And I wrote it down very quickly to try
8 to record it verbatim like he said. And then I had
9 not written the note in my notes at 18:29 until
10 later on -- the 18:29 denotes the time he said that
11 and then I summarized his -- what he had said to me
12 in that note, in my chronological notes.

13 Q. So your testimony is that further
14 states he was going to shoot himself is a summary
15 of I was going to eat one in Niagara falls for what
16 I'd done?

17 A. That was what I interpreted that
18 statement to mean, yes.

19 Q. You interpreted it to mean he was going
20 to shoot himself; is that right?

21 A. Yeah. When he told me that there was
22 two loaded guns in his truck and that when he said
23 he was going to eat one, I thought -- my
24 interpretation of that was that he intended to
25 commit suicide by shooting himself as a result of

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 the homicide.

2 Q. Okay. And so you have -- you've been
3 informed by a suspect that you've just arrested
4 that he intended to commit suicide; is that right?

5 A. Right.

6 Q. And there are protocols that an officer
7 has when they are given that type of information,
8 aren't there?

9 A. Yes.

10 Q. In fact, the next thing that you did is
11 help process Mr. Shivers into the detention center;
12 correct?

13 A. So he went from the airport he went
14 back to a Canada Border Services Agency called GTEC
15 which stands for Greater Toronto Enforcement Center
16 to be processed on the warrant.

17 Q. And you took part in his booking there;
18 correct?

19 A. No, I did not. I got there later on.

20 Q. Okay. So you didn't fingerprint him?

21 A. No, I did not.

22 Q. Okay. You fingerprinted him the next
23 day in the other holding center; is that right?

24 A. No, I never fingerprinted Mr. Shivers.

25 No.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. So you -- you were informed that
2 he's suicidal according to you; right?

3 A. Yes.

4 Q. And despite the fact that this person
5 has told you they're suicidal, you don't tell
6 anybody where he's being detained to put him on
7 suicide watch, do you?

8 A. So it was my understanding that the
9 other officers did know. I am aware as well that
10 when the CBSA officers process their warrants that
11 they do ask people if they're suicidal. So I'm
12 confident that that question would have been put to
13 him.

14 Q. Okay. You took no steps to inform
15 anybody where he was being detained that he was
16 suicidal, did you?

17 A. I did not. I assume that -- well, I
18 knew that the other officers did know and I'm aware
19 that part of their intake process does cover that.

20 Q. Did you ask any of the other officers
21 involved in Mr. Shivers's arrest to inform anyone
22 at the detention center that he was supposedly
23 suicidal?

24 A. I didn't ask anybody, no.

25 Q. You didn't ask anybody. Okay. Now,

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 | you also indicated that you were later asked to ask
2 | Mr. Shivers some questions; is that correct?

3 | A. Yes.

4 | Q. And you took him into a -- a room with
5 | I think no windows; correct?

6 | A. It had a window, just one window.

7 | Q. And it was just you and him in there;
8 | right?

9 | A. Right.

10 | Q. And there's no -- you told him it was
11 | going to be recorded, but it actually -- I think
12 | you now claim it wasn't recorded; right?

13 | A. So another officer on my team, Officer
14 | Smith asked me to ask Shivers if he wanted to give
15 | a audio and video recorded interview. And that was
16 | done after he had spoken to a lawyer and I asked if
17 | he wanted to give that interview and he said, no.
18 | And then no interview occurred.

19 | Q. So are you telling this jury that you
20 | took him into this room and you said, do you want
21 | to give an interview and he said, no, and that was
22 | it?

23 | A. More or less that was it. The facility
24 | when we arrived, again, he was in an immigration
25 | facility, it wasn't a police station, so they

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 | didn't have interviewing -- proper interviewing
2 | rooms. And if he had indicated that wanted to give
3 | a statement, then I would have likely had to take
4 | him to a police station that had audio and video
5 | recording equipment to do that.

6 | Q. Okay. But, Detective Dean, you just
7 | told this jury that more or less that's true; is
8 | that right?

9 | A. No, that's true.

10 | Q. Okay. So isn't it true that when you
11 | took him into this room he had already said he
12 | wanted an attorney; correct?

13 | A. Yes. And I'm aware that he did speak
14 | to a lawyer --

15 | MS. MCMENAMIN: Your Honor, before this
16 | testimony goes any further, may the parties
17 | approach?

18 | THE COURT: Sure.

19 | (WHEREUPON, there was a bench
20 | conference)

21 | Q. So, Detective Dean, you -- you were
22 | tasked with interrogating Mr. Shivers; is that
23 | correct?

24 | MS. MCMENAMIN: Objection, Your Honor.
25 | Asked and answered.

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 THE COURT: What was the question? I'm
2 sorry.

3 MS. BARBIER: He was tasked with
4 interrogating Mr. Shivers; is that correct?

5 THE COURT: You can ask it another way,
6 please.

7 Q. You were -- it was requested of you
8 that you attempt to interrogate Mr. Shivers; is
9 that right?

10 A. So I was asked to see if wanted to
11 participate in an interview.

12 Q. Okay. And when you left him at this
13 detention center he had not been strip searched;
14 correct?

15 A. I don't know.

16 Q. And no one that you know of informed
17 anybody at the detention center that he supposedly
18 according to you was suicidal; is that right?

19 A. So what you're talking about here, you
20 keep calling it a detention center, it's like an
21 immigration station. It's not a detention center.
22 It's not a jail, so people don't get held there.
23 He would have been transported to a detention
24 center later on.

25 Q. Are you aware of the fact that he spent

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 the night there?

2 A. I don't think he did.

3 Q. Okay. Well, he did. And --

4 MS. MCMENAMIN: Objection, Your Honor.

5 Testifying --

6 THE COURT: That is testifying.

7 MS. MCMENAMIN: I'd ask that that
8 comment be stricken from the record.

9 THE COURT: I'll strike it.

10 Q. Are you saying -- are you trying to
11 tell this jury there's no detention areas or cells
12 for people to be held there?

13 A. So at the immigration processing
14 center, GTEC, the Greater Toronto Enforcement
15 Center, he definitely did not sleep over there. He
16 would have gone to an immigration holding center
17 which is a different facility and he was driven
18 there. So those are two different buildings.

19 Q. Okay. If you are brought in after a
20 certain hour, isn't it true that they have to keep
21 you there?

22 A. I'm not sure what the holding center
23 policy is.

24 Q. Okay. And you're aware that since he
25 hadn't been strip searched and according to you he

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 | was suicidal, he could have had objects on his
2 | person that he could have committed suicide with;
3 | correct?

4 | A. I don't know if he was strip searched
5 | or not.

6 | Q. And you don't know what items he had on
7 | his person, do you?

8 | A. No.

9 | Q. And you -- did you come back the next
10 | day to do anything further with Mr. Shivers?

11 | A. No, I did not.

12 | Q. Okay. Let's talk about when you
13 | informed the authorities here in South Carolina
14 | that Mr. Shivers allegedly made this statement that
15 | you didn't write chronologically in your notes.
16 | Isn't it a fact that the authorities in South
17 | Carolina weren't informed of this supposed
18 | statement until almost two years later?

19 | A. Again, my notes are written the day of
20 | his arrest and I wasn't the one who subsequently
21 | handled the case prep involved in it, so I don't
22 | know when everything was turned over.

23 | Q. Well, according to you and your
24 | interpretation of his statement, that would have
25 | been a pretty important statement to share with the

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 officers that were investigating this case,
2 wouldn't it?

3 A. It was my understanding that they knew
4 about it.

5 Q. But they contacted you in March of 2021
6 and that is the first time the lead case agent
7 learned of that statement; correct?

8 MS. MCMENAMIN: Objection, Your Honor,
9 this is calling for speculation as to what another
10 agent would have been asked to do or information
11 they would have provided.

12 MS. BARBIER: I'll rephrase it.

13 THE COURT: Thank you.

14 Q. Detective Dean, did you personally
15 undertake any efforts to let anybody in South
16 Carolina know that Mr. Shivers allegedly made this
17 statement to you and -- you and only you?

18 A. So the officer who is taking care of
19 that was Officer Smith and she absolutely one
20 hundred percent knew of that statement and it was
21 my understanding that she would have passed that
22 information on. Absolutely.

23 Q. Okay. But my question was, did you
24 undertake any efforts to contact anybody in South
25 Carolina to relay this critical statement that you

JESSE DEAN - CROSS-EXAMINATION BY MS. BARBIER

1 | say the Defendant said only in your presence, did
2 | you do that, yes or no?

3 | A. I didn't do it because I assumed that
4 | it was done by that officer who was in charge of
5 | this. So I assumed she had done it.

6 | Q. And you're now aware that it was --

7 | MS. MCMENAMIN: Objection, Your Honor.
8 | This is going into again putting testimony on the
9 | record that he is now aware of what happened or
10 | didn't happen. There's --

11 | THE COURT: Well, he can testify to
12 | what he knows. I'm going to let her ask. He
13 | either knows or he doesn't.

14 | Q. Are you now aware that no one in South
15 | Carolina in law enforcement was aware this
16 | statement was supposedly made to you until two
17 | years after the fact?

18 | A. If you're telling me that now, now I
19 | know.

20 | Q. And there are no other witnesses to Mr.
21 | Shivers supposedly saying this, are there?

22 | A. No.

23 | Q. And if he had -- you -- I would imagine
24 | you are a conscientious law enforcement officer;
25 | correct?

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes.

2 Q. And if Mr. Shivers or anybody told you
3 that they were suicidal, you would take the time to
4 let people know who were handling that person that
5 he was in this state of mind; correct?

6 A. It was my understanding that those
7 officers knew.

8 Q. But if Mr. Shivers hadn't really made
9 this statement, you wouldn't have had an obligation
10 to do that, would you?

11 A. No. And I'm aware of that as part of
12 the immigration intake that they do, they always
13 ask that question.

14 Q. But did you bother to talk to anybody
15 at intake about what you heard supposedly?

16 A. The immigration officers who processed
17 the paperwork were aware of it and then they would
18 have passed on that information.

19 Q. Which immigration officers that
20 processed this paperwork that you're referring to
21 are you talking about, could you name those people?

22 A. Hernandez and Collier.

23 Q. Okay. And how do you know that he was
24 aware of it?

25 A. Because they ask that question each and

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 every time there's an immigration arrest.

2 Q. Were you present when anybody asked Mr.
3 Shivers that, if they did?

4 A. No.

5 Q. Okay. So you don't have personal
6 knowledge of that, do you?

7 A. No.

8 MS. BARBIER: Beg the Court's
9 indulgence. Nothing else. Thank you.

10 THE COURT: Thank you.

11 MS. MCMENAMIN: Redirect, Your Honor?

12 THE COURT: Yes, ma'am.

13 REDIRECT EXAMINATION

14 BY MS. MCMENAMIN:

15 Q. Detective Dean, you were asked
16 questions about why you didn't have a recording of
17 your interactions with the Defendant. Can you tell
18 me if you had a recording what would it have shown?

19 A. Exactly what I've written --

20 MS. BARBIER: Objection, Your Honor.
21 It's speculating.

22 THE COURT: It is speculating. I mean,
23 he just said he doesn't have a recorder and I think
24 he just testified to what happened. So --

25 MS. MCMENAMIN: Yes, Your Honor.

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Detective Dean, you were asked whether
2 or not there were recordings from the airport.
3 Would those recordings have had audio?

4 A. No.

5 Q. And based on your observations and your
6 experience with the arrest itself, was there
7 anything eventful?

8 A. No, there wasn't.

9 Q. And the Defendant's demeanor at the
10 time of that arrest, what was it?

11 A. He was calm and didn't give us a hard
12 time at all.

13 Q. Did he appear to be under any sort of
14 emotional distress?

15 A. No.

16 Q. You were also asked why you didn't
17 interrogate someone while walking through an
18 airport. Can you explain that?

19 A. Right. It was a busy airport obviously
20 and certainly wouldn't have made sense to question
21 anybody while you're walking through an airport.

22 Q. Were there a lot of people around?

23 A. Yes.

24 Q. How much noise was there?

25 A. The normal amount of noise that you

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 would find in a busy airport?

2 Q. Where would you normally interview
3 someone?

4 A. To conduct a proper interview it would
5 certainly have to be at a police facility.

6 Q. Detective Dean, you were also asked if
7 the Defendant at the airport asked for a lawyer,
8 what do you recall?

9 A. Yes, I believe he asked for a lawyer.
10 Yes.

11 Q. At the airport?

12 A. I'm not sure if it was at the airport
13 or not, but I know he was given calls to a lawyer
14 and did speak to a lawyer.

15 Q. Did he speak with a lawyer over the
16 phone at the airport?

17 A. No, not at the airport. No.

18 Q. In your procedure, if he asked for a
19 lawyer, would you have allowed him to call?

20 A. Not in -- so if he had wanted to talk
21 to a lawyer, you have to talk to a lawyer in a
22 private area where you can have a private
23 conversation, so certainly doing that at an airport
24 would be impossible.

25 Q. And, Detective Dean, as you're walking

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 through the airport are you asking him any
2 questions?

3 A. No.

4 Q. Are you trying to elicit any
5 information from him?

6 A. No.

7 Q. And when he made the statements to you
8 at the vehicle, was he being questioned then?

9 A. No.

10 Q. Had you been asked at this point to
11 investigate -- to interview the Defendant?

12 A. No.

13 Q. When were you asked to interview him?

14 A. Later on in the evening.

15 Q. Okay. And did you do anything to try
16 to get information out of the Defendant?

17 A. No.

18 Q. And you were asked about your notes and
19 writing them in a chronological order; is that
20 always possible?

21 A. No, it's not. In this particular I
22 wasn't caught up to where I was. And when he said
23 what he said for me, wanted to write it down as
24 quickly as I could to try to get a verbatim
25 statement for what he said and so I just found the

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 first blank page in my book and wrote it out as
2 quickly as I could. And at that point it
3 definitely was not in chronological order. It
4 didn't make sense to try to get caught up and then
5 try to remember that and write it down.

6 Q. Okay.

7 MS. MCMENAMIN: Permission to approach
8 the witness, Your Honor.

9 THE COURT: Sure.

10 MS. MCMENAMIN: And to confirm, Exhibit
11 23 was entered into evidence, Your Honor. I
12 believe without objection.

13 THE COURT: It is Defendant's Exhibit
14 Number -- was it a Court's Exhibit?

15 MS. MCMENAMIN: I did not object. I
16 thought it was entered into evidence.

17 THE COURT: It was. It was a Court
18 Exhibit Number 23 which is not Defendant's Exhibit
19 Number 1.

20 MS. MCMENAMIN: It's not been
21 renumbered, that's why I was asking.

22 MS. CREPPON: I didn't have a chance.

23 MS. MCMENAMIN: Okay.

24 THE COURT: It should be Number 1
25 though. It was a Court Exhibit.

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 MS. MCMENAMIN: May I publish it as
2 Defense's Number 1, Your Honor?

3 THE COURT: Yes.

4 MS. CREPPON: I can stick a sticker on
5 it real fast.

6 MS. MCMENAMIN: Please.

7 (WHEREUPON, the sticker was placed on
8 Defendant's Exhibit Number 1)

9 MS. MCMENAMIN: And permission to
10 publish to the jury?

11 THE COURT: You may.

12 Q. Detective Dean, you were asked about
13 your notes and --

14 A. Yes.

15 Q. -- the order of them. What I'd like to
16 ask you first is do any of the notes on this first
17 page pertain to this case?

18 A. No, they don't.

19 Q. Looking on the second page of your
20 notes, is this where your investigation sort of
21 begins?

22 A. Yes, it is.

23 Q. At what time do we see that the
24 investigation begins?

25 A. At 16:08 hours.

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Okay. And your handwriting, Detective
2 Dean, how would you describe it?

3 A. Relatively neat.

4 Q. The letters, do they go with the line?

5 A. Yes.

6 Q. Do we see the same style of neat
7 handwriting on the next page?

8 A. Yes.

9 Q. Okay. And do we see mention of being
10 at the Airport Marriott hotel?

11 A. Yes.

12 Q. Okay. And on the next page, do we see
13 the same style of handwriting?

14 A. Yes.

15 Q. And on this page, what number is in the
16 top left corner?

17 A. 18:10.

18 Q. What is 18:10?

19 A. 6:10 p.m.

20 Q. So that's a time?

21 A. Yes.

22 Q. And 18:10 converts to 6:10 p.m.?

23 A. Yes.

24 Q. And what are you noting here at 18:10?

25 A. That's the note I made for the arrest

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 time.

2 Q. And do we see any notes on this page
3 regarding the Defendant's statement of where the
4 truck was parked?

5 A. Yes, that is further down the page just
6 a little bit below it.

7 Q. Right here?

8 A. Yes.

9 Q. Okay. And then we see an 18:29, what
10 time does that convert to?

11 A. 6:29 p.m.

12 Q. Okay. And is this where you make your
13 note about what the Defendant told you?

14 A. Yes.

15 Q. So this is your summary?

16 A. Yes.

17 Q. Now, there's another page with this
18 handwriting, another page, and then the last page
19 of this Defendant's Exhibit 1, what do we see here?

20 A. So that was when I wrote what Shivers
21 said to me.

22 Q. And what time is noted here?

23 A. 6:29 p.m.

24 Q. And what time does 18:29 convert to?

25 A. 6:29.

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Now, Detective Dean, is there any
2 difference between the writing on this page as
3 compared to all of the others?

4 A. Right. The writing on that page is
5 like obviously way more messy and not on the lines.

6 Q. And why is that?

7 A. So when I wrote that down, again, I was
8 trying to write it down quickly -- as quickly as I
9 could so I could record what he said as close to
10 verbatim as I could.

11 Q. When the Defendant said this statement
12 to you, listen, be careful, there's two guns in the
13 truck, one in the middle console, it's loaded. And
14 another in an old briefcase in the backseat also
15 loaded. One is a Kimber .45 and one's an XD 9. I
16 was going to eat one in Niagara Falls for what I
17 had done. When he made that statement, were you
18 surprised at all?

19 A. Yes.

20 Q. Okay. And how quickly after he made
21 that statement did you write down this note?

22 A. Within 30 seconds.

23 Q. Okay. And you said in your summary he
24 states he was going to shoot himself?

25 A. Yes.

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. What about this statement in its
2 entirety led to that note?

3 A. The fact that he had told me that he
4 had two loaded guns, one in the console so
5 obviously gives you easy access to it and then when
6 he said, I was going to eat one, I interpreted that
7 to mean that he intended to shoot himself --

8 MS. BARBIER: Objection.

9 THE COURT: He can't give his opinion
10 unless you want to tell me something else.

11 MS. MCMENAMIN: Your Honor, he was
12 asked about the discrepancies between the two
13 statements and he's just trying to explain why it
14 was written this way on this page that was entered
15 into on cross-examination. And --

16 (WHEREUPON, there was a bench
17 conference)

18 THE COURT: I am going to strike it
19 because somebody can't testify what's in somebody
20 else's mind of what they thought. So if you would
21 strike that from the record and go forward.

22 MS. MCMENAMIN: Yes, Your Honor.

23 Q. Now, just looking back to your note,
24 what time does 18:29 convert to?

25 A. 6:29 p.m.

JESSE DEAN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. And what time do we see written that
2 where you transcribed the Defendant's statement?

3 A. 6:29.

4 Q. And is that to be 6:29 p.m.?

5 A. Yes.

6 Q. If it was military time like the other
7 notes, can you tell us whether or not there would
8 be a zero in front of it?

9 A. Yes, it wold be 06:29.

10 Q. Would that make it a.m. or p.m. with a
11 zero in front of it?

12 A. A.m.

13 Q. Okay. Detective Dean, was this
14 statement made before or after you found the
15 vehicle?

16 A. Before.

17 Q. And what about the statement regarding
18 the location of the vehicle?

19 A. Before.

20 Q. Okay. What do your notes at 18:10
21 state about the arrest?

22 A. Just that it was -- the arrest was
23 without incident.

24 Q. Could you read for me from here to
25 here?

JESSE DEAN - RECROSS EXAMINATION BY MS. BARBIER

1 A. Yes. Approach with team, Officer
2 Collier arrest Shivers without incident and advised
3 his reason for arrest and RTC. Shivers will be
4 transported to GTEC to be processed on CBSA
5 warrant.

6 Q. Detective Dean, when the Defendant made
7 this statement, what was his demeanor like then?

8 A. He was calm.

9 Q. Was he emotional at all?

10 A. No.

11 Q. And this statements at the very end,
12 the wording is I was going to eat one in Niagara
13 Falls for what I had done, am I reading that
14 correctly?

15 A. Yes.

16 Q. Is going present tense or past tense?

17 A. Past tense.

18 Q. And do you happen to know where the
19 Defendant in this case crossed the border into
20 Canada?

21 A. Yes, he crossed into Niagara Falls
22 approximately two days prior.

23 Q. That was two days prior?

24 A. Yes.

25 MS. MCMENAMIN: Nothing further for

JESSE DEAN - RECROSS EXAMINATION BY MS. BARBIER

1 this witness, Your Honor?

2 THE COURT: Any --

3 MS. BARBIER: Just briefly, Your Honor.

4 RECROSS EXAMINATION

5 BY MS. BARBIER:

6 Q. So, Detective Dean, your testimony is
7 that Mr. Shivers didn't make any statements until
8 he was in the parking garage and made those
9 statements to you at the transport vehicle;
10 correct?

11 A. Yes.

12 Q. Okay. Well, let's take a look at your
13 notes. Because at 6:10 you quote the Defendant as
14 making a statement to you?

15 A. Right.

16 Q. At 6:10 not 6:29; right?

17 A. So when he said --

18 Q. Let's look at this.

19 A. Sorry. I was going to say --

20 Q. 18:10 --

21 MS. MCMENAMIN: Objection, Your Honor.
22 If the witness could finish answering the question.

23 MS. BARBIER: Well, I got to ask the
24 question first.

25 THE COURT: All right.

JESSE DEAN - RECROSS EXAMINATION BY MS. BARBIER

1 A. Sorry.

2 THE COURT: Go ahead.

3 Q. So this is 18:10; correct?

4 A. Yes.

5 Q. Okay. And these are entries under
6 18:10; right?

7 A. Yes.

8 Q. Okay. And you say in your 18:10 entry
9 Shivers say "the truck is parked on level 6 by pole
10 I29"; correct?

11 A. Right. So that -- when he said that,
12 that was well after 6:10. It was very close to
13 6:29. So the --

14 Q. But that's not what your notes say;
15 right?

16 A. So my notes say at 6:10, that is when
17 we approached and arrest him and that was the time
18 for that. The other entries in there didn't have
19 times associated to them.

20 Q. Oh, so you're saying these entries you
21 don't know what time they were made?

22 A. They were after 18:10.

23 Q. Okay. But you just told us a few
24 minutes ago that he didn't make any statements to
25 you until you were in the parking garage; correct?

1 A. So he made the statement about where
2 the truck was parked basically when we were right
3 outside of the vehicle prior to him getting loaded
4 into it.

5 Q. And you would agree with me that
6 there's nothing after 18:29 in between 19:25
7 indicating the other statement that you allege goes
8 with these notes; correct?

9 A. Right. So, again, I documented that
10 statement on a separate page.

11 Q. And that separate page, the information
12 contained within it didn't make its way to South
13 Carolina until two years later; right?

14 A. If that's what you're telling me.

15 MS. BARBIER: That's it. Thank you.

16 THE COURT: Thank you.

17 MS. MCMENAMIN: Nothing further for
18 this witness.

19 THE COURT: Okay. All right. May I
20 excuse this Officer?

21 MS. MCMENAMIN: Yes, Your Honor.

22 THE COURT: You're excused. Mr.
23 Foreman, I'm going to let the jury go. If I can
24 have y'all here again at 9:15 in the morning. I
25 hope y'all have a good evening. Remember no

1 talking about this case. No research. No reading
2 the newspaper or watching TV about this case. I
3 will hopefully have some information for you
4 tomorrow. This case I kind of got the impression
5 y'all weren't real excited about Saturday. We will
6 talk about it. We might go into Monday, but I will
7 address you about that tomorrow.

8 So, Mr. Foreman, if you can get a vote
9 if there's anyone who wants to work on Saturday and
10 it might be that we can finish tomorrow, I don't
11 know. But we'll talk about it tomorrow so
12 everybody can make plans. Okay. I just like to
13 keep y'all informed. Y'all have a good evening and
14 I'll see you in the morning at 9:15.

15 (WHEREUPON, the jury exits the
16 courtroom at 5:24 p.m.)

17 THE COURT: Okay. Anything from the
18 State?

19 MS. MAYES: Nothing from the State,
20 Your Honor.

21 THE COURT: Anything from the Defense?

22 MS. BARBIER: No, Your Honor.

23 THE COURT: All right. 9:15 in the
24 morning.

25 **(MARCH 25, 2022)**

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 THE COURT: All right. Let's bring the
2 jury in.

3 (WHEREUPON, the jury enters the
4 courtroom at 9:30 a.m.)

5 THE COURT: Mr. Foreman, is the jury
6 ready?

7 THE FOREPERSON: We are.

8 THE COURT: Let me ask the jury, did
9 anyone have any problems with communications with
10 newspapers, anything about this case? Anybody
11 tried to talk to you or anything like that? If so,
12 raise your hand.

13 (No one responded)

14 THE COURT: Very good. All right. The
15 State can call their next witness.

16 MS. MAYES: The State calls Robert
17 Frigon.

18 ROBERT FRIGON,
19 being first duly sworn, was examined and testified
20 as follows:

21 THE CLERK: If you'll have a seat over
22 there, please. State your name and spell your last
23 for the record, please.

24 MR. FRIGON: Detective Constable Robert
25 Frigon, F-R-I-G-O-N. Badge number 4571, Toronto

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 Police Service.

2 DIRECT EXAMINATION

3 BY MS. MAYES:

4 Q. Good morning, Detective Frigon.

5 A. Good morning, Counsel.

6 Q. Tell us a little bit about yourself,
7 where are you currently employed?

8 A. So I'm currently employed with the
9 Toronto Police Service as a detective constable
10 attached to the professional standards unit.

11 Q. All right. I'm going to ask you to
12 take the microphone, pull it a little bit closer to
13 you.

14 A. Certainly. Thank you.

15 Q. How long have you been a Canadian law
16 enforcement official?

17 A. I've been a member of the Toronto
18 Police Service for approximately 33 years -- a
19 little over 33.

20 Q. And can you tell us during the course
21 of that 33 year career how much of that time was
22 spent with the Toronto Police Services?

23 A. The entire time, 33 plus years.

24 Q. What is the Toronto Police Services?

25 A. It is a police service that provides

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 | policing for the City of Toronto.

2 | Q. And how large is the municipality of
3 | Toronto, Canada?

4 | A. It would be -- population seems to be
5 | going up and up. Four or 5,000 currently including
6 | all the Greater Toronto Area.

7 | Q. Okay. Four or 5,000?

8 | A. Sorry. Four or 5,000,000.

9 | Q. Toronto's a major international city?

10 | A. Yes, it is.

11 | Q. Now, with that said, can you tell us
12 | whether Toronto also has an international airport?

13 | A. Yes, it does. Pearson International
14 | Airport which is actually located in Mississauga.

15 | Q. All right. Now, at that Toronto
16 | Airport, can visitors acquire flights to
17 | international locations including Europe?

18 | A. Yes, they can.

19 | Q. I want to ask you whether or not you
20 | had any involvement with the fugitive task force
21 | team for the Toronto Police Services?

22 | A. Yes, I did.

23 | Q. And how so?

24 | A. Actually, I've had two stints with the
25 | Toronto fugitive squad. I worked back there in

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 1999 and I believe it was back in 2017, 2018 I
2 returned to that unit.

3 Q. Now, Detective, I want to take you to
4 the date of September 5, 2019 and I want to ask you
5 whether or not as a member of that fugitive squad
6 you had any involvement in the arrest of the
7 Defendant in this case Vincent Shivers?

8 A. Yes, I did.

9 Q. How so?

10 A. I was part of an arrest team that
11 attended the Pearson International Airport to
12 location that individual.

13 Q. All right. Now at this point in time,
14 how much -- did you even know anything about the
15 case other than the basics?

16 A. Pretty much the basics. I received
17 information from Detective Constable Dean that a
18 gentleman by the name of Vincent Shivers with a
19 date of birth 69/05/26, a brief description of Mr.
20 Shivers was a suspect in a homicide in South
21 Carolina.

22 Q. All right. And with that information,
23 what did you do next?

24 A. So I also received information that the
25 suspect, Mr. Shivers, could be at the Marriott

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 | Airport hotel which is located at Carlingview Drive
2 | and Dixon Road.

3 | Q. All right. Now, do you have any notes
4 | with you today?

5 | A. I do.

6 | Q. And can you tell us whether or not
7 | these notes were contemporaneous to your role in
8 | this case?

9 | A. Yes, they were.

10 | Q. How so?

11 | A. They were made during the course of the
12 | investigation and/or shortly thereafter. And with
13 | the Court's permission, I'd like to use them to
14 | refresh my memory.

15 | THE COURT: Absolutely.

16 | MR. FRIGON: Thank you, Your Honor.

17 | Q. So referring to those notes, Detective,
18 | what was your first step after you learned that he
19 | may have stayed at the Marriott which is adjacent
20 | to the international airport?

21 | A. Correct. So I was at home at that
22 | time, so as a result of receiving that information,
23 | I made my way over to the Marriott Airport hotel.

24 | Q. And what if anything did you observe or
25 | learn?

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 A. At approximately 16:40, I arrived at
2 that hotel.

3 Q. And if you can convert the times as we
4 go from military.

5 A. I'm sorry. At approximately 4:40 I
6 arrived at that location. Had a look around the
7 main parking area. I also went into the
8 underground parking location which is located on
9 the west side of the building in an attempt to
10 locate a vehicle that I had information on as well.

11 Q. All right. And what happened next?

12 A. I was unsuccessful in locating that
13 vehicle on the premise or in that underground
14 parking garage. Myself and one of the other
15 officers, our CBSA officer, Mr. Collier went into
16 the hotel and ended up speaking to the front desk
17 staff.

18 Q. All right.

19 A. And at that time I learned that Mr.
20 Shivers had been at that hotel; however, had just
21 previously booked out.

22 Q. Okay. What happened next?

23 A. Shortly thereafter, I advised Detective
24 Constable Dean --

25 Q. Jesse Dean?

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 A. Correct. That Mr. Shivers had checked
2 out. And shortly thereafter we received
3 information to attend Pearson International Airport
4 Terminal 1.

5 Q. All right.

6 A. So I made my way over to Pearson
7 International Airport. And then shortly upon
8 arriving at Pearson we received information that we
9 were to attend Gate E76 at Terminal 1.

10 Q. All right. And --

11 A. I believe that was a flight for London
12 Heathrow.

13 Q. Okay. And that was based on
14 information available to you at that point?

15 A. Correct.

16 Q. Okay. What happened after you went to
17 the gate for that flight to London?

18 A. So our crew attended that location.
19 Upon arriving there were a number of people getting
20 ready to board for that flight, so there was a fair
21 amount of people mulling around. I observed a male
22 that I thought could possibly be Mr. Shivers. I
23 broke away from the other officers to speak to that
24 male. And then shortly thereafter I learned that
25 was not the subject.

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 Q. Okay. What happened next?

2 A. The other members of my team -- our
3 team had located Mr. Shivers and had placed him
4 under arrest.

5 Q. All right. Now, going into this, had
6 you been furnished with a photograph of Vincent
7 Shivers?

8 A. Yes, I had been.

9 Q. As well as his physical
10 characteristics?

11 A. I have, yes.

12 Q. All right. What occurred after he had
13 been located by I believe you said a CBSA officer,
14 can you tell us what that is?

15 A. So our CBSA officer is a Canada Border
16 Services Agent. He's a member that is assigned to
17 our unit to assist in any immigration related
18 offenses.

19 Q. All right. Can you tell us
20 approximately what time Vincent Shivers was placed
21 under arrest there at the Toronto International
22 Airport?

23 A. So at approximately 18:10 he was
24 arrested by PC Collier or CBSA Officer Collier.

25 Q. And 18:10 being?

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 A. Being -- or 18:10 being 6:10.

2 Q. Okay. 6:10?

3 A. Correct.

4 Q. Now, what if anything occurred during
5 this part of the process? Is there a search
6 incident to arrest, is that protocol?

7 A. There was a search incident to arrest
8 where various items were located.

9 Q. And if you can just tell us what is
10 meant by that term searches incident to arrest?

11 A. So essentially he's arrested, he's
12 patted down for any weapons, anything that he might
13 have on him that could assist in his escape or
14 assisting him in injuring any of the officers.

15 Q. All right. And can you tell us whether
16 or not keys to a vehicle were located?

17 A. Keys were located. They were later
18 turned over to myself. They were keys for a Ford
19 F-150 crew cab pickup truck.

20 Q. Now, at this point in time, were you
21 asking -- can you tell us whether or not you were
22 asking any questions to Vincent Shivers?

23 A. I was not.

24 Q. And did you observe any other officers
25 asking questions to Vincent Shivers?

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 A. I did not. I had arrived shortly after
2 he had been arrested and I did not hear any officer
3 ask him any questions.

4 Q. All right. What happened next?

5 A. Essentially, after that, we made our
6 way through the airport back to an awaiting
7 transport vehicle. Upon arriving at the transport
8 vehicle -- upon arriving at the transport vehicle
9 just as Mr. Shivers was about to be placed into the
10 rear of that vehicle, myself and Jesse Dean were
11 having a conversation. We were essentially
12 indicating that now we should try and locate the
13 Ford F-150. Mr. Shivers indicated that it was
14 parked on level 6 near pole I29.

15 Q. All right. So I want to ask you a
16 little more about that. The conversation was
17 between who?

18 A. The conversation was between Jesse --
19 or Jesse Dean and myself.

20 Q. Did you direct that conversation
21 towards the Defendant at all?

22 A. I did not nor did Jesse direct that
23 conversation to him.

24 Q. And the information he provided about
25 the location of the vehicle, can you tell us in

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 | what manner that occurred?

2 | A. I felt it was a spontaneous utterance.
3 | Him just providing that information freely to us.

4 | Q. All right. And did you make a note as
5 | to where he indicated that Ford F-150 would be
6 | located?

7 | A. I did. And I indicated level 6 near
8 | pole I29.

9 | Q. All right. What happened next?

10 | A. Essentially, Mr. Shivers was loaded
11 | into that vehicle by Jesse Dean.

12 | Q. And where were you during that process?

13 | A. I walked to the rear of the vehicle.
14 | It's not an only big vehicle. He was being placed
15 | in there. And I essentially stood at the rear of
16 | the vehicle.

17 | Q. Okay. Now, once you obtained
18 | information about where the vehicle was located, I
19 | believe your testimony was level 6 near I29, what
20 | efforts did you undertake to locate the vehicle?

21 | A. So myself and Jesse Dean made our way
22 | up to the level 6 parking garage and at I29 we
23 | located that black Ford F-150 crew cab pickup truck
24 | with South Carolina plates KDD528. It was parked
25 | essentially against a west side wall tucked up

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 | pretty tight to that wall with the wheels facing
2 | immediately south or straight.

3 | Q. Okay. And what is the next process in
4 | recovery of a vehicle like this once someone has
5 | been arrested?

6 | A. So it was seized for safekeeping as
7 | well. There was some other information that we
8 | received that caused me to want to have that
9 | vehicle seized.

10 | Q. And when you say other information, can
11 | you tell us who you received that information from?

12 | A. So I received that information from
13 | Jesse Dean.

14 | Q. All right. And can you tell us whether
15 | or not that had to do with the possibility that
16 | firearms may be present in the vehicle?

17 | A. That is correct.

18 | Q. And what effort was taken at that point
19 | to secure the vehicle?

20 | A. So our contract -- or our tow Toronto
21 | police tow were notified. They attended the scene
22 | at approximately 20:55.

23 | Q. And what occurred next?

24 | A. Upon them arriving on scene, I had
25 | conversation with the civilian operator of that

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 vehicle. He indicated to me that --

2 MS. BARBIER: Objection. Hearsay.

3 MS. MAYES: I'll rephrase.

4 THE COURT: Thank you.

5 Q. Was there some type of effort needed to
6 facilitate the towing?

7 A. Yes, there was. The wheels as I
8 indicated were locked in a straight position and
9 unfortunately the vehicle could not be towed with
10 the wheels in that location.

11 Q. And what if any actions did you take at
12 that point?

13 A. At that time I opened the vehicle.
14 Placed on latex gloves. Entered the vehicle.
15 Turned the wheel immediately to the left. I took
16 the seatbelt, I wrapped the seatbelt around the
17 steering wheel to lock the wheels in that location.
18 Closed the vehicle and locked the door.

19 Q. All right. Other than that action to
20 adjust the steering wheel, did you search the
21 vehicle in any way?

22 A. I did not.

23 Q. Did you handle any items in the
24 vehicle?

25 A. I did not.

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 Q. Did you recover any items from the
2 vehicle?

3 A. I did not.

4 Q. And what occurred next?

5 A. As I indicated I locked that vehicle.
6 Shortly thereafter, the vehicle was lifted and
7 ultimately transported to our forensic
8 identification services which is located what I
9 refer to as Jane Street Garage.

10 Q. All right. Now, is that a secure
11 location for the Toronto Police Services?

12 A. Yes, it is.

13 Q. How so? When you say secure, in what
14 way is it secure?

15 A. So it's secure in terms of the only
16 people that do have access to that location are
17 either sworn members or civilian members of the
18 Toronto Police Service. It's not a location that
19 the general public would have access to.

20 Q. All right. And what other efforts if
21 any were taken to secure that vehicle while it was
22 within the custody of the Toronto Police Services?

23 A. So it was placed into a bay at the
24 forensic identification services bay. And I would
25 probably explain that the bay has a one car garage

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 | maybe slightly bigger. It was placed in with the
2 | nose of the vehicle closest to the interior as
3 | opposed to the rear door. And it was secured in
4 | that location.

5 | Q. All right. And was each door of that
6 | vehicle sealed?

7 | A. It was. So my next step, once the
8 | vehicle was dropped in that garage, I started to
9 | make seals for that vehicle and I placed them on
10 | six locations of that vehicle so nobody could open
11 | the vehicle.

12 | Q. All right. And who was responsible for
13 | the care and custody of this vehicle while it was
14 | within the custody of the Toronto Police Services?

15 | A. So that vehicle was in the care and
16 | custody of forensic identification services for a
17 | month or two, I believe, and then it was later
18 | moved.

19 | Q. Okay. And where was it moved to?

20 | A. It was moved to another secure
21 | location.

22 | Q. Can you tell us whether or not that's
23 | also a location within Toronto Police Services?

24 | A. So essentially it was transported to
25 | our 54 division which is now called the 55

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 Substation. It was placed into another secure
2 garage where stolen vehicles that are recovered are
3 placed for safekeeping and storage.

4 Q. And other items as well?

5 A. Correct. So it is another location
6 that only sworn members or civilian members of the
7 Toronto Police Service have access and it's not
8 open to the general public.

9 Q. And throughout this time, Detective
10 Constable, can you tell us whether or not the seals
11 on this truck remained intact?

12 A. Upon it being taken over to 55 before
13 leaving forensic identification services, I did
14 have a look at the seals, the six seals that were
15 placed on that vehicle by me previously were in
16 tact. However, when we arrived at 55 Substation
17 and the vehicle was placed in that garage, when the
18 tow truck operator was removing the boom,
19 unfortunately, the rear of the F-150 was struck
20 causing damage to the rear driver's side taillight
21 and back and also on the seal that was placed on
22 the rear tailgate.

23 Q. All right. And was that damage to the
24 inside of the vehicle or the exterior of the
25 vehicle?

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 A. The exterior.

2 Q. So you're referring to a seal at the
3 tailgate?

4 A. Correct.

5 Q. Are you familiar with the retrieval of
6 this vehicle?

7 A. It was later retrieved by members of
8 Lexington County police services.

9 Q. All right. And do you recall whether
10 or not that included Sergeant Nick Burt of the
11 Lexington County Sheriff's Department?

12 A. Yes, it did.

13 Q. And do you recall whether or not that
14 occurred on or about February 20th of 2020?

15 A. I believe it was in around that date.

16 Q. All right. I'm going to show you some
17 photographs and ask you whether or not you
18 recognize them. First being State's 136?

19 A. Correct. So that would be --

20 Q. And at this time if you can just tell
21 us whether or not you do recognize the photographs?

22 A. I do.

23 Q. 136, 138, what is currently Court's
24 Exhibit 30 and Court's Exhibit 28. Can you tell us
25 whether or not those appear to be a fair and

ROBERT FRIGON - DIRECT EXAMINATION BY MS. MAYES

1 accurate representation of that Ford F-150 as you
2 have described it to us?

3 A. Yes, I do.

4 MS. MAYES: Your Honor, for evidence at
5 this time and we would be changing Court's Exhibit
6 30 to State's 130. And we would be changing
7 Court's Exhibit 28 to State's Exhibit 131.

8 THE COURT: No additional objections?

9 MS. BARBIER: No additional objections,
10 Your Honor.

11 THE COURT: Okay. They're admitted.

12 (WHEREUPON, State's Exhibit Numbers 130
13 and 131 were entered)

14 Q. All right. And looking here at State's
15 131, what are we observing right here?

16 A. So those are the two seals that I
17 placed on the driver's side of that vehicle. The
18 first one being placed on the driver's side door
19 overlapping the driver's side passenger door or
20 being the B pillar. And immediately behind that
21 would be another seal that I'd also placed on that
22 rear door almost at the bottom where it attaches to
23 the rear of that vehicle or just before the bed.

24 Q. All right. Now, we're going to look at
25 State's 136 and you said that once it was moved to

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 the second facility there had been damage. If you
2 could tell us what if anything is occurring here?

3 A. So that would be the seal that I placed
4 on the rear tailgate. And as you can see, there is
5 damage to that seal and I believe there's a little
6 damage on the rear of that tailgate also.

7 Q. Despite this, can you tell us whether
8 or not the vehicle remained secure throughout this
9 process?

10 A. Yes, it did.

11 Q. And who was -- which officer was
12 responsible for its security?

13 A. I was responsible for the security of
14 that vehicle maintaining care of the keys.

15 Q. Now I'm going to show you what is
16 State's 130 being a closer up view of the right
17 side of that vehicle.

18 A. Correct. So that would be the
19 passenger's side. So passenger's side front door
20 as well as the rear door and the seals that I had
21 placed in the same locations as I did on the
22 driver's side.

23 Q. Now, if someone had accessed the
24 vehicle, can you tell us whether or not the seals
25 would be -- whether or not that would be apparent

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 through the --

2 A. It certainly would -- we would have
3 torn that seal apart so it could indicate that
4 somebody had actually gone into that vehicle.

5 Q. So that would be apparent to you?

6 A. Yes, it would.

7 Q. Now we're going to take a look at the
8 left side of the vehicle. State's 138. Closer up
9 view. And, again, that left side of the vehicle
10 showing both doors. Throughout this time up until
11 its retrieval by Nick Burt of the Lexington County
12 Sheriff's Department, did this vehicle remain
13 secure?

14 A. It did.

15 MS. MAYES: Beg the Court's indulgence.

16 THE COURT: Take your time.

17 MS. MAYES: Nothing further at this
18 time, Your Honor.

19 THE COURT: Ms. Barbier?

20 MS. BARBIER: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. BARBIER:

23 Q. Good morning, Detective Frigon.

24 A. Good morning.

25 Q. Detective Frigon, you are employed with

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 the Canadian Police Department; is that right?

2 A. That's correct.

3 Q. Okay. And you have been there, I think
4 you said, more than 30 years; is that right?

5 A. Thirty-three years.

6 Q. Thirty-three years. Okay. Are you a
7 supervisor in the police department?

8 A. I am not.

9 Q. Okay. So you are not the supervisor of
10 Detective Dean; is that right?

11 A. That is correct.

12 Q. You all work on a team together; is
13 that right?

14 A. Correct.

15 Q. Okay. Do you go on fugitive
16 investigations all the time?

17 A. We do.

18 Q. And is it part of your protocol there
19 for you all to share information concerning the
20 investigation?

21 A. We do.

22 Q. Okay. Now, you testified on direct
23 that you didn't take part in the actual physical
24 arrest of Mr. Shivers; is that correct?

25 A. That's correct.

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 Q. You walked upon this being made as Mr.
2 Shivers was being patted down and had already been
3 handcuffed; correct?

4 A. Upon completion of him being
5 handcuffed.

6 Q. And I believe it was your testimony
7 that nobody asked Mr. Shivers any questions; is
8 that right?

9 A. Correct.

10 Q. And is it also your testimony that Mr.
11 Shivers didn't say anything while he was being
12 arrested?

13 A. I'm not sure what he said. I was not
14 privy to any of those conversations.

15 Q. Okay. But you were standing fairly
16 close by; correct?

17 A. I was not. I was in another location
18 upon his arrest dealing with another individual.
19 So --

20 Q. When you -- I'm sorry.

21 A. So whatever was transpiring upon his
22 arrest, I did not witness.

23 Q. Okay. But when you walked up to him
24 while he was being arrested and patted down, you
25 did not hear Mr. Shivers make any statements; is

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 | that right?

2 | A. I did not.

3 | Q. Okay. And I do believe that you had
4 | acknowledged that while Mr. Shivers was being
5 | escorted down the terminal at the airport, you
6 | believe conversations were taking place with him
7 | you just weren't a party to them; is that right?

8 | A. That's not correct. I believe there
9 | were conversations that were taking place with
10 | other officers, however, nobody was speaking
11 | directly to Mr. Shivers.

12 | Q. Okay. So your testimony is none of the
13 | officers involved in the arrest or apprehension of
14 | Mr. Shivers said anything to him for more than 20
15 | minutes?

16 | A. Correct.

17 | Q. Now, how far away were you standing
18 | from Mr. Shivers as he was being escorted down the
19 | terminal in the Toronto Airport?

20 | A. So a group of us would have been
21 | walking through the airport, approximately the
22 | distance that we are, between yourself and myself
23 | --

24 | Q. Okay.

25 | A. -- as we're moving through the airport.

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 Q. So how many officers were actually next
2 to Mr. Shivers?

3 A. My team, so there would have been four
4 of us.

5 Q. And how many were actually physically
6 next to him in handling him down the terminal?

7 A. I believe Jesse Dean was handling him
8 down the airport.

9 Q. So he was the only one?

10 A. I believe either him or one of the
11 other officers, I can't recall specifically.

12 Q. Okay. So you were standing -- I would
13 say this is about 15 feet, would you say that?

14 A. I'd say it's about 15 feet.

15 Q. Okay. You were standing 15 feet away
16 from the murder suspect and Detective Dean and
17 where were the other three members of your team
18 standing?

19 A. I can't recall exactly where they were
20 when we were making our way through the airport.

21 Q. Were you doing anything to move the
22 crowd away from Mr. Shivers?

23 A. I don't recall anything specifically.
24 I felt that we were moving reasonably well.

25 Q. Okay. And you felt that 15 feet was a

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 close enough distance to assure the public's
2 safety?

3 A. I did. Mr. Shivers had been
4 cooperative. He hadn't caused us any issues, so I
5 felt it was secure.

6 Q. Okay. Now I noticed in your notes that
7 you used to refresh your recollection, I noticed
8 that you also employed the practice of making your
9 notes chronological; is that correct?

10 A. I try to keep them in chronological
11 order.

12 Q. Any time you put the time, something
13 happened to it in the left-hand side; is that
14 right?

15 A. Correct.

16 Q. And you indicate in your notes at 18:10
17 that S, I guess, which means the subject was
18 located and arrested by Collier CBSA; correct?

19 A. Correct.

20 Q. Okay. And that would be Officer
21 Collier with the Canadian Border Service; is that
22 right?

23 A. That is correct.

24 Q. Okay. And that's at 18:10, so that
25 would be 6:10 in regular time; right?

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 A. Yes.

2 Q. Okay. And you indicate in your notes
3 at 8:10 that --

4 A. Or 6:10? Sorry.

5 Q. I'm sorry, 6:10. That he tells us
6 where it is located. You're referring to the car;
7 correct?

8 A. Not at that time. My notes go on in
9 terms of what we had done shortly thereafter and it
10 was only upon arriving at his vehicle that he
11 indicated where the vehicle was.

12 Q. Well, I'm sorry, is there some other
13 time that you've notated besides 18:10 where you
14 indicate he makes a statement that he's -- and
15 tells you where his car is?

16 A. I did not put a time down in which he
17 indicated his vehicle was.

18 Q. But you put a time down following that;
19 correct?

20 A. I did. I put a time down in which the
21 tow truck arrived on scene.

22 Q. Okay. So are you telling us that the
23 notation in your notes 18:10 only refers to the
24 first statement of that?

25 A. Yes, the time in which he was arrested.

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 Q. And you didn't write down a time for
2 anything else?

3 A. I did not.

4 Q. So you actually heard, according to
5 you, Mr. Shivers tell you and Detective Dean where
6 his car was located; correct?

7 A. Correct.

8 Q. Okay. And the Toronto Airport is a big
9 place; right?

10 A. It's a big location.

11 Q. Yeah. So the parking garage is quite
12 large; right?

13 A. It's large.

14 Q. And it would be logical for you to just
15 ask him where his car was located so you could
16 locate it quickly; right?

17 A. Not really, no.

18 Q. You wouldn't normally employ that
19 tactic as simple as that, hey, where's your car so
20 we can go get it?

21 A. No.

22 Q. Okay. So your testimony is that he
23 just blurted it out, my car's on the 6th level?

24 A. That's correct.

25 Q. Okay. And you understand that if he

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 | hadn't blurted it out and it had been a result of
2 | being in custody and he had been -- and questioned
3 | that that statement would not be admissible; right?

4 | A. That's correct.

5 | Q. It wouldn't be admissible because you
6 | had not administered his rights to him; correct?

7 | A. Correct.

8 | Q. And so your testimony is he blurted it
9 | out?

10 | A. Correct.

11 | Q. Okay. That works out well for the
12 | Canadian police --

13 | MS. MAYES: Objection, Your Honor, to
14 | the commentary and move to strike.

15 | THE COURT: I agree. We're going to
16 | strike that from the record and I'm going to ask
17 | the jury to ignore that. It's not evidence and
18 | you're not to consider it.

19 | Q. So Mr. -- I'm sorry, Detective Frigon,
20 | you have indicated that you heard him say, blurt
21 | out, that his car was on the 6th level; correct?

22 | A. Yes.

23 | Q. And you also have indicated that you
24 | heard him say that there were firearms located in
25 | the car; correct?

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 A. I did not hear that.

2 Q. You did not hear that. Okay. And you
3 did not hear that and you did not put that in your
4 notes, did you?

5 A. I did not.

6 Q. Okay. And you also did not hear him
7 make any statements related to wanting to shoot
8 himself, did you?

9 A. I did not hear that, no.

10 Q. Okay. And you did not hear him make
11 any statements about anything arguably related to
12 the murder in South Carolina, did you?

13 A. Correct.

14 Q. Okay. In fact, Detective Dean did not
15 on September 5th tell you that Mr. Shivers had made
16 those statements, did he?

17 A. I did learn about the firearms and that
18 statement I learned later. I can't recall exactly
19 when. But I was more concerned about the firearms
20 that were located in the vehicle and securing that
21 vehicle.

22 Q. So at some point on September 5th,
23 Detective Dean took the time to tell you that Mr.
24 Shivers had said to be careful because there were
25 two firearms in that vehicle; correct?

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 A. Correct.

2 Q. Okay. But he did not on September 5th
3 take the time to tell you about any other
4 statements Mr. Shivers allegedly made, did he?

5 A. He could have. I can't recall
6 specifically. As I indicated, once we had talked
7 about the firearms that were in that vehicle, I
8 wanted to secure that vehicle. I do know that
9 Jesse was extremely busy organizing various other
10 things, namely the retrieval of that truck. So I
11 don't recall exactly when I learned that.

12 Q. But you do recall you didn't learn it
13 that day; correct?

14 A. It could have been later that day or
15 the very next day, I don't recall.

16 Q. But you didn't write anything down in
17 your notes about it; correct?

18 A. I did not.

19 Q. Okay. And you would agree with me that
20 a murder suspect making a statement that related to
21 being suicidal and something related to why he was
22 suicidal would be an important statement to
23 document for a file in a murder investigation,
24 wouldn't you?

25 A. So it would have been a statement to be

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 | documented by the individual that had taken that
2 | statement. I had not taken that statement nor had
3 | I heard that statement, so I did not put it in my
4 | notes.

5 | Q. Okay. And you also did not put
6 | anything else in your notes related to any
7 | conversations you had with Detective Dean about
8 | this case, did you?

9 | A. I did not.

10 | Q. Okay. Now, the policy of putting your
11 | notes in chronological order, how long has that
12 | been in place in the Toronto Police Department?

13 | A. I think it's been in place for a number
14 | of years, I think, yes.

15 | Q. Is that policy in effect to ensure that
16 | these notes create an accurate timeline?

17 | A. An accurate timeline and they're used
18 | to refresh your memory with regards to things that
19 | have taken place.

20 | Q. Okay. And I noticed that you provided
21 | your notes which contain a statement that the
22 | Defendant allegedly told you, I think, last week or
23 | the week before last to the authorities here in
24 | South Carolina; is that right?

25 | A. I believe I had sent them out -- I had

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 sent them out prior to going to Minneapolis the
2 last week at some point. I was of the
3 understanding there's another officer that works in
4 our office, I was of the understanding that they
5 had been sent out quite a while ago.

6 Q. Okay.

7 A. So I believe -- I've been at my new
8 location where I currently work for approximately
9 two years. I had thought they had been sent over
10 before that.

11 Q. But in fact they hadn't been sent until
12 last week; right?

13 A. I sent them myself last week; correct.

14 Q. And are you aware that Detective Dean's
15 notes that apparently according to him contain
16 critical information, didn't get sent for about two
17 years into the investigation?

18 A. I don't know that.

19 Q. Okay. Just want to make sure that I'm
20 clear on this too. You didn't wear a body camera
21 on the day that you arrested Mr. Shivers, did you?

22 A. I was not. We are not assigned body
23 cameras. There are no officers assigned to
24 organized crime or any officers assigned to any
25 specialty plain clothes units that are assigned

ROBERT FRIGON - CROSS-EXAMINATION BY MS. BARBIER

1 with body cameras.

2 Q. Is that policy changing?

3 A. To my knowledge, not that I'm aware.

4 Q. But uniformed officers are currently
5 now going to have to wear body cameras; correct?

6 A. It was a pilot project that was started
7 about a year ago and I do believe they are now
8 currently assigning uniformed officers with body
9 worn cameras.

10 Q. And you would agree with me after
11 having been in law enforcement for 33 years, that
12 having a body camera on allows a jury such as this
13 one to have a very accurate depiction of what
14 actually transpired during an arrest, would you
15 agree with that?

16 A. I would.

17 Q. And we don't have the benefit of that
18 in this case, do we?

19 A. No, we don't.

20 Q. Now, with respect to the information
21 you were given regarding Mr. Shivers's trip to
22 London, were you aware or did you find on him when
23 he was arrested a round trip ticket to London?

24 A. I did not.

25 Q. Are you aware that he had a round trip

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 ticket?

2 A. I was not.

3 Q. Okay. Are you aware of what was seized
4 from his person when he was patted down in the
5 airport?

6 A. No, I was not other than the keys that
7 were turned over to me at a later date -- or a
8 later time.

9 Q. Okay.

10 MS. BARBIER: Beg the Court's
11 indulgence.

12 THE COURT: Sure.

13 MS. BARBIER: I don't have any other
14 questions. Thank you.

15 THE COURT: Any redirect?

16 MS. MAYES: Nothing from the State,
17 Your Honor.

18 THE COURT: May I excuse Detective
19 Frigon?

20 MS. MAYES: Yes, Your Honor.

21 THE COURT: You're excused. Thank you.

22 MS. MAYES: The State calls Sergeant
23 Nick Burt.

24 NICHOLAS BURT,
25 being first duly sworn, was examined and testified

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 as follows:

2 THE CLERK: Thank you. If you'll have
3 a seat, please. State your name and spell your
4 last for the record.

5 MR. BURT: It's Nicholas Burt, B-U-R-T.

6 DIRECT EXAMINATION

7 BY MS. MAYES:

8 Q. Good morning.

9 A. Good morning.

10 Q. Sergeant Burt, tell a little bit about
11 yourself, where are you currently employed?

12 A. I am currently employed as a sergeant
13 over the major crimes unit domestic violence team
14 at the Lexington County Sheriff's Department.

15 Q. All right. And how long have you been
16 a sergeant with the Lexington County Sheriff's
17 Department?

18 A. Since November of 2019.

19 Q. All right. And how long have you been
20 a detective or investigator?

21 A. Since January of 2015.

22 Q. And what type of work did you do prior
23 to major crimes?

24 A. So originally I started with Columbia
25 Police Department in 2009 in Columbia, South

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Carolina and then I came to the Lexington County
2 Sheriff's Department in 2010. I worked in patrol
3 in the north region and I was a field training
4 officer and master deputy which is assistant
5 supervisor to the sergeant.

6 Then I transferred into investigations
7 first with south region as our property crimes
8 investigator. Property crimes includes burglaries,
9 motor vehicle thefts, larceny related cases before
10 transferring into the bigger crimes unit which is
11 four teams. So there's a domestic violence team; a
12 SVU, special victims units team; and then the two
13 other teams they're just referred to as catch all
14 because what the other two teams don't work they
15 will get. And that's the team that I was assigned
16 to when this case happened.

17 Q. All right. And do you also have
18 experience investigating property crimes such as
19 burglaries?

20 A. I do.

21 Q. How long were you with the property
22 crimes division at the Lexington County Sheriff's
23 Department?

24 A. From 2015 to 2018.

25 Q. All right. Sergeant Burt, tell us how

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 | you became involved in the investigation of the
2 | murder of Roselynn Cedenno?

3 | A. So as I said, I was assigned to the
4 | major crimes unit when this occurred. So it's a
5 | Monday through Friday job, but we are on-call every
6 | two weeks, so there would be a call of day call
7 | which is from 4 in the morning to 2 in the
8 | afternoon and then night call which is 2 p.m. until
9 | 4 in the morning.

10 | So during this week I was on day call.
11 | And when patrol responds to a scene that an
12 | immediate investigation is needed, they will
13 | contact the day call sergeant which I was on the
14 | team at that time.

15 | Q. All right. And what time approximately
16 | do you recall arriving there at the crime scene at
17 | 216 Carriage Hill Court?

18 | A. So I got there on September 3rd at
19 | approximately 12:15 p.m.

20 | Q. And what was occurring upon your
21 | arrival?

22 | A. So when we get on scene, we'll meet
23 | with the responding deputies and get briefed on
24 | what they've learned so far.

25 | Q. Okay. Tell us what you recall about

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 the exterior of the residence, did you see any
2 lights on upon your arrival?

3 A. No. When I was there you couldn't tell
4 that any lights were on from the inside or the
5 outside.

6 Q. Did you observe the exterior front door
7 light I'm showing you here in 201 to be on?

8 A. It was not on.

9 Q. What about the exterior garage light
10 shown in 164?

11 A. It was not on.

12 Q. What was the first thing you did,
13 Sergeant, upon your arrival?

14 A. Again, we would meet with the
15 responding deputies and get briefed on what they
16 had done, what they had learned so far and then a
17 search warrant was in the process of being
18 obtained.

19 Q. All right. Now, did you also have a
20 chance to inspect the residence yourself?

21 A. Yes. After the search warrant was
22 obtained our crime scene unit, they would go in
23 first and document first so things don't get
24 disturbed and then we're allowed to come in after
25 that so we can take an overview, kind of look and

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 see how things are in the house.

2 Q. All right. So I want to follow-up on
3 that a little bit more. Earlier in this trial we
4 saw the body camera video of Deputy Joshua Hale.

5 A. Okay.

6 Q. You've observed that video yourself?

7 A. Yes.

8 Q. And his entry was without a search
9 warrant?

10 A. Yes.

11 Q. And after his entry and the recovery of
12 the body of Roselynn Cedeno, what if any action did
13 the Lexington County Sheriff's Department take to
14 actually search that premises?

15 A. So it was very methodical and extremely
16 time consuming. It was a large house and room by
17 room we went through, photographs were taken before
18 things were removed.

19 Q. And was all that done pursuant to a
20 search warrant?

21 A. It was?

22 Q. Were you there long enough on that
23 first day, September 3rd, to examine the living
24 areas?

25 A. I was.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. Including the master bedroom?

2 A. Yes.

3 Q. Can you tell us whether or not you also
4 had a chance to inspect the premises for any signs
5 of forced entry?

6 A. I did and there were none.

7 Q. Can you tell us whether or not the
8 crime scene investigation team, previously we heard
9 from CSI lead investigator Tom Smith, were you
10 present as that was undergoing?

11 A. I was.

12 Q. What happened next?

13 A. So I spent a long time that day going
14 through things until we got to a stopping point and
15 then the scene was secured and somebody sits out
16 front so nobody can disturb going in there and
17 messing anything up until we get back the next day.

18 Q. Now, were you also aware that the Ford
19 F-150 was missing?

20 A. I was.

21 Q. Were you also part of the process in
22 trying to locate where that Ford F-150 may be?

23 A. So it was entered into NCIC as
24 associated with Mr. Shivers as being missing.

25 Q. And who if at all within the sheriff's

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 department was undertaking the responsibility of
2 talking to his coworkers to try and determine his
3 whereabouts?

4 A. So I tried to call him as well as
5 Captain Laintz.

6 Q. Okay. And first before you did that,
7 can you tell us whether or not you also spoke with
8 any individuals at Camping World?

9 A. At that time I had not on the first
10 day.

11 Q. Do you know whether other members of
12 the sheriff's department were?

13 A. Yes, his manager had been spoken to.

14 Q. And, ultimately, did you obtain a phone
15 number for Vincent Shivers?

16 A. I did.

17 Q. And can you tell us what that phone
18 number was?

19 A. Yes. I'll refer to my notes, I don't
20 know it by heart. 864-978-3627.

21 Q. All right. Upon obtaining that phone
22 number, Sergeant Burt, what action did you take?

23 A. We attempted to call it to make contact
24 with him.

25 Q. Did you do that yourself?

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 A. I did.

2 Q. What happened when you attempted to
3 call Vincent Shivers?

4 A. It was recorded and it went straight to
5 voicemail -- or the call that I made was recorded
6 and then when I made the call it went straight to
7 voicemail.

8 Q. And this was what date and time?

9 A. September 3rd at 4:43 p.m.

10 Q. I'm going to show you what is State's
11 150 and ask you whether or not you recognize this?

12 A. I do.

13 Q. And how do you recognize it?

14 A. It has my initials and date.

15 Q. And you've listened to this audio?

16 A. I have.

17 Q. And can you tell us whether or not it's
18 a fair and accurate representation of your call to
19 the Defendant on this particular date?

20 A. It is.

21 Q. You recognize the audio?

22 A. I do. It's my voice.

23 Q. All right.

24 MS. MAYES: This would be State's 150
25 for evidence, Your Honor.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 THE COURT: Any objection?

2 MR. SWERLING: No, Your Honor.

3 THE COURT: All right. It's admitted.

4 (WHEREUPON, State's Exhibit Number 150
5 was entered)

6 Q. All right. And, Detective Burt, can
7 you tell us whether or not the call you made was
8 consistent with this number, the 978-2627 number
9 that you've had for Vincent Shivers throughout this
10 investigation?

11 A. Yes.

12 MR. SWERLING: That was a different
13 number than he just testified to.

14 Q. What number did you testify to?

15 MR. SWERLING: I'm just confused that's
16 why --

17 THE COURT: Okay. Let's get him to
18 repeat the phone number then.

19 A. I have written in my notes 3627 on this
20 first day to call.

21 MR. SWERLING: Then I object. It's not
22 even the same phone number. It's not his right
23 phone number.

24 THE COURT: All right. Let's -- Ms.
25 Mayes?

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 MS. MAYES: Yes, Your Honor.

2 Q. Do you have your notes, Detective Burt,
3 as to the number that you called?

4 A. That's the number I'm looking at from
5 my notes. So I don't know if I put the wrong
6 number in the notes.

7 Q. All right. Do you recall making a
8 phone call to the number that you had for Vincent
9 Shivers?

10 A. I did.

11 Q. Okay. Were you able to get a response?

12 A. I was not.

13 MR. SWERLING: Wait a minute. That's
14 what I'm saying. If he was calling the number,
15 978-3627, that's not Mr. Shivers's phone number.

16 THE COURT: I got it. Let me see the
17 lawyers up here.

18 (WHEREUPON, there was a bench
19 conference)

20 THE COURT: All right. Mr. Foreman,
21 we're going to take a quick break. Stretch your
22 legs. You've been at it for an hour. It won't
23 take us long. Let me just take up with a matter
24 with the lawyers. Please, it's not time to discuss
25 this case amongst yourselves yet, but I'll let you

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1 go to the jury room.

2 (WHEREUPON, the jury exits the
3 courtroom at 10:23 a.m.)

4 THE COURT: Okay.

5 MS. MAYES: Judge, I know there's
6 another matter, but I did also want to say that the
7 audio itself I believe is self evident. We will
8 withdraw it at this time. I do think we can lay a
9 proper foundation by publishing it to the Court.

10 THE COURT: Mr. Swerling?

11 MR. SWERLING: All I heard was two
12 different numbers, so I don't know --

13 THE COURT: Two different numbers and
14 obviously he wouldn't answer if it was -- I got the
15 point.

16 MS. MAYES: And the audio itself, the
17 number is dictated.

18 THE COURT: Okay. But do you hear Mr.
19 Shivers's voice on there.

20 MS. MAYES: That's correct, Your Honor.
21 It goes to voicemail.

22 THE COURT: And it says this is Mr. so
23 and so, please leave me a message?

24 MS. MAYES: It says calling
25 864-978-2627.

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1 THE COURT: Okay. Mr. Swerling, I know
2 that we need to take a break right quick, do you
3 want to answer me when you come back?

4 MR. SWERLING: Yes, Your Honor.

5 THE COURT: Okay.

6 (WHEREUPON, there was a short break)

7 THE COURT: Everybody ready?

8 MS. MAYES: We are, Your Honor. But I
9 believe we can lay the foundation if we can do that
10 in camera.

11 THE COURT: Okay. We're going to do it
12 in camera and see if they can lay a foundation, Mr.
13 Swerling. Go ahead.

14 Q. Detective Burt, I'm going to show you
15 what is State's 229, this being a Verizon record,
16 pursuant to stipulation, do you recognize your
17 phone number?

18 A. I do.

19 Q. And what is your phone number?

20 A. 803-528-5631.

21 Q. And what is the date and time that you
22 made a call?

23 A. 9/3/2019 at 20:47 in GMT Time.

24 Q. All right. And so subtracting the
25 four?

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 A. It would be right around 4:47 p.m.

2 Q. All right. And what do your notes
3 indicate that you did around that point in time?

4 A. That I attempted to call Vincent
5 Shivers.

6 Q. All right. And what number is
7 reflected in these Verizon records that you made a
8 call to?

9 A. 864-978-2627.

10 Q. All right. And can you tell us whether
11 or not that is the same number that you dictate in
12 this recording being State's 150?

13 A. It is.

14 MS. MAYES: For evidence, Your Honor.

15 THE COURT: And that's Exhibit 150;
16 right?

17 MS. MAYES: Yes, Your Honor.

18 THE COURT: Okay. Go ahead and play
19 it.

20 MR. SWERLING: Can I ask him a
21 question?

22 THE COURT: She's going to play this
23 first and --

24 MR. SWERLING: Could he state his
25 number again? I'm sorry.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 MR. BURT: My number 803-528-5631.

2 MR. SWERLING: Thank you.

3 Q. All right. Now, can you tell us in
4 State's 229 being that Verizon record how this
5 record was obtained?

6 A. This was obtained pursuant to a search
7 warrant.

8 Q. All right. And a search warrant for
9 whose Verizon phone account?

10 A. Vincent Shivers.

11 MS. MAYES: That would be all from the
12 State, Your Honor.

13 MR. SWERLING: Can I see that, Suzanne?
14 Okay. That's it.

15 THE COURT: All right. Are we in
16 agreement?

17 MR. SWERLING: Apparently he dialed the
18 right number, but wrote down the wrong number.

19 THE COURT: Okay. Can I bring the jury
20 back in then?

21 MS. MAYES: The State is ready, Your
22 Honor.

23 THE COURT: All right. Let's bring
24 them in.

25 (WHEREUPON, the jury entered the

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 | courtroom at 10:45 a.m.)

2 | THE COURT: Mr. Foreman, is the jury
3 | ready?

4 | MR. FOREMAN: We are.

5 | THE COURT: Okay. You may continue.

6 | CONTINUED DIRECT EXAMINATION

7 | BY MS. MAYES:

8 | Q. Sergeant Burt, pursuant to your
9 | investigation, can you tell us whether or not you
10 | obtained a search warrant for phone records in this
11 | case?

12 | A. I did.

13 | Q. And whose phone records did you obtain
14 | by search warrant?

15 | A. The Defendant, Vincent Shivers, as well
16 | as Roselynn Cedeno.

17 | Q. Okay. So can you tell us whether or
18 | not those phone records included ingoing and
19 | outgoing call records?

20 | A. They did.

21 | Q. As well as location data that would
22 | potentially exist?

23 | A. If it was there, yes.

24 | Q. And text messaging?

25 | A. Yes.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. Ingoing and outgoing?

2 A. Yes.

3 Q. I'm going to show you is State's 229 by
4 stipulation. Do you recognize that document?

5 A. I do.

6 Q. And can you tell us whose Verizon
7 account that reflects?

8 A. This is from Vincent Shivers.

9 Q. All right. And what is the number for
10 that account?

11 A. 864-978-2627.

12 Q. Can you tell us whether or not that
13 Verizon record reflects any type of incoming call
14 from you?

15 A. It does from 803-528-5631.

16 Q. All right. And what was the date in
17 which you made a call to the phone number that you
18 listed for Vincent Shivers?

19 A. September 3, 2019.

20 Q. All right. And is that the same phone
21 call that you just referenced previously regarding
22 State's 150?

23 A. It is.

24 Q. And looking here on the overhead, I
25 realize it's hard to see, but for 9/3/2019 at

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 20:47, when you do the time conversion, what time
2 would that be?

3 A. It's about 4:47 p.m.

4 Q. All right. And you identified
5 previously the recording on 150, whose voice is
6 that?

7 A. My voice.

8 Q. All right.

9 MS. MAYES: Permission to publish 150
10 Your Honor?

11 THE COURT: Yes, ma'am.

12 Q. All right. And upon that, again, this
13 is going to be September 3rd?

14 A. It is.

15 Q. Upon that when you were unable to reach
16 the Defendant by phone on Tuesday, September 3rd
17 while at the crime scene and the Ford F-150
18 missing, what action did you take next?

19 A. So, again, the truck and Mr. Shivers
20 were entered into NCIC as missing.

21 Q. Now, did you have a chance to walk the
22 premises down to the area known as the walk out
23 basement?

24 A. I did.

25 Q. I'm going to show you what is State's

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 98 in evidence and ask you whether or not you
2 recognize any items shown here in State's 98?

3 A. I do.

4 Q. Can you tell us whether or not you were
5 present when those items were recovered?

6 A. I was.

7 Q. What do you recall about that?

8 A. The cell phone was ringing as it was
9 being collected by CSI and I took a photograph of
10 the number that was coming in?

11 Q. All right. I'm going to show you what
12 is State's 127 and ask you whether or not you
13 recognize it?

14 A. I do.

15 Q. And how so?

16 A. It's a picture I took of the phone as
17 it was being collected and it has an incoming call.

18 Q. Is it the same phone you see on the
19 overhead in State's 98?

20 A. It is.

21 MS. MAYES: State's 127 for evidence,
22 Your Honor.

23 THE COURT: Any objection? It's
24 admitted.

25 MR. SWERLING: No additional objection.

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1 THE COURT: No additional.

2 (WHEREUPON, State's Exhibit Number 127
3 was entered)

4 Q. Now, during the process that the phone
5 is being collected, are you handling the item?

6 A. I don't recall if that was in my hand
7 or CSI's, but I did take that photo.

8 Q. And what time is reflected here?

9 A. Can you zoom in just a little bit on
10 it? I think it's 10:51.

11 Q. And based upon your memory was that
12 a.m. or p.m.?

13 A. That's p.m.

14 Q. And were you or any of the other CSI
15 officers during the collection of this item taking
16 steps?

17 A. Yes, it had to be carried from where it
18 was at downstairs to back to the car.

19 Q. All right. I'm going to show you what
20 is State's 122. And in looking at that particular
21 item, can you tell us whether or not it reflects
22 steps around the date and time that you accessed
23 that device?

24 A. It does. It looks like on 9/3/2019
25 with a start time of 10:28 p.m.

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1 Q. So looking here at this particular item
2 we see steps taken on 9/1?

3 A. Yes.

4 Q. And we see steps taken on 9/3 at
5 approximately 10:28 p.m.?

6 A. Yes.

7 Q. Through 10:34 p.m. And I'm also going
8 to show you the original being State's 98. Do you
9 see a time reflected here on the iPad?

10 A. Looks like 10:26.

11 Q. So who was taking steps with these
12 devices on 9/3 within that timeframe of 10:28
13 through 10:51 p.m.?

14 A. It would have been when CSI was
15 collecting it.

16 Q. And you're familiar with the phone
17 extraction in this case?

18 A. I am.

19 Q. You reviewed that as part of your
20 investigation?

21 A. I have.

22 Q. Were there any steps at all reflected
23 for this device on the date of 9/2?

24 A. There were not.

25 Q. Now, what efforts if any did you take

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 to identify some of the phone numbers that were
2 affiliated with this device specifically within the
3 timeframe of September 1st and September 2nd prior
4 to the discovery of Roselynn Cedeno's body?

5 A. All the numbers that came in around
6 that time were accounted for.

7 Q. All right. And when you say accounted
8 for, I'm going to start by asking you about this
9 particular phone number here. And you said you
10 were a witness to this phone number calling in?

11 A. I was.

12 Q. And that being the Savannah phone
13 number?

14 A. Correct.

15 Q. And who was that number ultimately
16 attributed to based upon your investigation?

17 A. Roselynn's sister, Robin.

18 Q. Now, I'm going to show you what is
19 State's 103 already in evidence. Were you able to
20 identify the contact through your investigation
21 known as grandma?

22 A. Yes.

23 Q. And a phone number affiliated with
24 that?

25 A. I was.

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1 Q. And who did that turn out to be?

2 A. Roselynn's grandmother.

3 Q. What is the name of that individual?

4 A. Mary. Mary Cedenno.

5 Q. Okay. And can you tell us whether you
6 were able to identify the contact known as Tommy?

7 A. I was, it was her son Tommy Cedenno.

8 Q. All right. And there is a missed call
9 an 803-772-1791, can you tell us whether or not you
10 were able to identify that contact?

11 A. To Camping World.

12 Q. There is another contact which says
13 maybe Steve Smith, can you tell us whether or not
14 you were able to identify that contact?

15 A. It was Steve Smith, his manager.

16 Q. And I'm going to show you another
17 photograph that I'm going to have to show you with
18 the naked eye and this is in State's 103 and this
19 would be a missed call at 10:34 a.m.?

20 A. You want me to read that?

21 Q. Yes.

22 A. It's 803-979-0717.

23 Q. All right. And what did that number
24 turn out to be?

25 A. A coworker of Vincent's at Camping

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 World.

2 Q. All right. And if you could also take
3 a look at what is State's 73. Are you familiar
4 with whether or not there was a contact known as
5 Ryan?

6 A. It was -- it was her brother.

7 Q. And were you able to identify a number
8 affiliated with that family member?

9 A. I was.

10 Q. And what about the next contact?

11 A. It's Coo-Coo Boy.

12 Q. And Coo-Coo Boy is in her contacts, but
13 who did you identify that number attributed to?

14 A. Her father, Ruben Cedeno.

15 Q. Okay. And then what if any other
16 numbers did you account for?

17 A. There's a 336-880-2995, that's Steve
18 Smith. The other one is the name Tommy, again,
19 that's her son.

20 Q. And then was there any communication
21 with the Defendant in this case, Vincent Shivers?

22 A. Yes. Yes, on September 1, 2019.

23 Q. And was that in the form of call or
24 text?

25 A. Text and says, on my way.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. On my way on September 1st?

2 A. Yes.

3 Q. Now, after that communication from the
4 Defendant, Vincent Shivers, on September 1st
5 saying, on my way, through your examination of the
6 Verizon records both ingoing/outgoing calls and
7 ingoing and outgoing texts, did you ever see any
8 further communication between the Defendant,
9 Vincent Shivers, and the victim in this case,
10 Roselynn Cedenno?

11 A. I did not.

12 Q. Now, you mentioned obtaining search
13 warrants for the Verizon records for both the
14 Defendant and victim, what other search warrants
15 for documents were obtained in this case, Sergeant?

16 A. So I was provided with a FaceBook
17 account that was supposed to be associated with Mr.
18 Shivers. I obtained a warrant for those records.
19 The iPhone and two iPads in the house, search
20 warrants were obtained for those devices.

21 Verizon Wireless records for the
22 Defendant and Roselynn Cedenno were obtained. And
23 as a result of a preliminary extraction on her
24 Apple devices, it gives you your Apple ID, I sent a
25 search warrant to Apple to get any records

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1 associated from that from the cloud.

2 Q. Okay. So that would be records for the
3 cloud?

4 A. Yes.

5 Q. Apple ID?

6 A. Yeah, for Apple ID which is associated
7 with at Apple.

8 Q. And that search warrant was in regards
9 to whose Apple cloud account?

10 A. Roselynn Cedeno's.

11 Q. And did you have an opportunity to
12 review those records as well?

13 A. I did.

14 Q. Upon reviewing those records, did you
15 ever see or determine any type of active FaceBook
16 for Roselynn Cedeno?

17 A. I did not.

18 Q. Did you ever observe any type of active
19 Instagram account for Roselynn Cedeno?

20 A. Did not.

21 Q. Or any type of Snapchat account?

22 A. I did not.

23 Q. Or WhatsApp account?

24 A. No.

25 Q. Were you able to determine whether

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 | there was any type of active social media for the
2 | Defendant, Vincent Shivers?

3 | A. Just FaceBook.

4 | Q. And can you tell us whether or not you
5 | did obtain FaceBook records for the Defendant in
6 | this case, Vincent Shivers?

7 | A. I did. After FaceBook you have to have
8 | their -- so you go to your page and it's a unique
9 | like URL. And you can't send a search warrant to
10 | FaceBook and say give me everything for John Doe,
11 | it has to be unique to the person and I got it for
12 | Vincent Shivers.

13 | Q. All right. And did you also have an
14 | opportunity to review the FaceBook account for
15 | Vincent Shivers?

16 | A. I did.

17 | Q. Other than the message from Eric Wier
18 | looking for Vincent Shivers on September 3rd, did
19 | you find anything else within this timeframe?

20 | A. Not relevant to the case, no.

21 | Q. Now, the truck, what role if any did
22 | you play in the recovery of that Ford F-150 that
23 | we've already heard about?

24 | A. So to even get the truck, we had to
25 | have a what's called a treaty with our country and

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1 Canada and that took some time to get done so we
2 could go up there and get it. And once that
3 paperwork was approved, myself and another deputy
4 drove pulling that car trailer and met with
5 Canadian detectives to collect the truck.

6 Q. All right. Tell us about that process.
7 Can you confirm whether or not the seals that we
8 see overhead on State's 131 were intact at the
9 point that you arrived to retrieve that truck?

10 A. They were. It was in a garage facility
11 when we got there and they assisted getting it out
12 of the garage and on to that trailer with the tow
13 truck. The only seal that was messed up was on the
14 tailgate. There's no bed cover, you can see the
15 tailgate. It just had some damage on that seal.

16 Q. Okay. But as to anything on the
17 interior that would require entry into the interior
18 of the cab or the backseat, was there any damage to
19 those seals?

20 A. No, they were all intact.

21 Q. Where did you go to physically retrieve
22 this vehicle?

23 A. It was -- can I refer to my notes real
24 quick?

25 Q. Yes. And on what date?

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 A. So it would have been on February 20,
2 2020. And it was --

3 Q. Who went with you?

4 A. It was myself and Master Deputy Paul
5 and US Marshal Senior Inspector Bolden and
6 Detective Constable Smith who works for Toronto
7 Police Services and it was at the Toronto Police
8 Service 54 division located at 41 Cranfield Road in
9 East York, Ontario.

10 Q. And for the sake of logistics, how long
11 did it take you to travel to Toronto, Canada?

12 A. So we split it up where we kind of
13 picked a halfway point, but it gets you closer so
14 we could stop and rest in Pennsylvania and it was
15 like a nine and a half hour the first day.

16 Q. All right. And first day is nine and a
17 half hours to Pennsylvania and then what about the
18 secondary trip?

19 A. So the next morning we got up and
20 traveled to Toronto and where we were in
21 Pennsylvania was about a four hour drive.

22 Q. And did you process this vehicle there
23 in Canada or was it taken back to South Carolina?

24 A. No, it was just -- the purpose of going
25 up there was to get it as is intact and then bring

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 | it back to the sheriff's department to be processed
2 | later with the search warrant.

3 | Q. Okay. I'm going to show you some
4 | photographs and ask you whether or not you
5 | recognize them. Once it was returned to the
6 | Lexington County Sheriff's Department, how do you
7 | go about maintaining this vehicle in a secure
8 | location here?

9 | A. So it was left on that trailer and put
10 | into a secure evidence lot.

11 | Q. Okay. And does anyone else at the
12 | sheriff's department access this vehicle prior to a
13 | search warrant?

14 | A. No. It's secured in evidence, you
15 | can't get back there.

16 | Q. And on what date did you obtain a
17 | search warrant for the search of this vehicle and
18 | any of its contents?

19 | A. That was on February 24, 2020.

20 | Q. All right. And were you present for
21 | the execution of that search warrant for this
22 | vehicle?

23 | A. I was.

24 | Q. I'm going to show you some photographs
25 | and ask you whether or not you recognize them.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 First beginning with State's 187, State's 230,
2 State's 184 and State's 141. If you can tell us
3 whether or not these accurately reflect the
4 execution of that search warrant and the contents
5 therein?

6 A. They do.

7 THE COURT: Any objection?

8 MR. SWERLING: No, Your Honor.

9 THE COURT: They're admitted.

10 (WHEREUPON, State's Exhibit Numbers
11 141, 184, 187 and 230 were entered)

12 Q. I'm going to also show you 189 and 190
13 and ask you whether or not you're familiar with
14 these documents?

15 A. I am.

16 Q. How so?

17 A. They were collected from the vehicle.

18 Q. All right. And does the outside of the
19 sealed package indicate that?

20 A. They do.

21 Q. And again, you were present for the
22 search and seizure of these items from that Ford
23 F-150?

24 A. I was.

25 MS. MAYES: This will be State's 189

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 and 190 for evidence as well, Your Honor.

2 THE COURT: They're admitted. No
3 objection.

4 (WHEREUPON, State's Exhibit Numbers 189
5 and 190 were entered)

6 MS MAYES: We would ask permission to
7 break the seal?

8 THE COURT: Granted.

9 Q. While you're doing that, Detective
10 Burt, I'm going to show you some photographs. Once
11 the vehicle was retrieved were you able to confirm
12 that this was the vehicle of Vincent Shivers?

13 A. Yes, that's the South Carolina
14 registration card.

15 Q. Can you tell us whether or not any
16 firearms were recovered from this vehicle?

17 A. Yes, two firearms were recovered from
18 the vehicle.

19 Q. And can you tell us where in the
20 vehicle they were recovered?

21 A. So a Kimber .45 caliber firearm was
22 recovered from a briefcase in the back compartment
23 of the truck and then a Springfield 9mm firearm in
24 its case was located in the center console of the
25 truck.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. I'm first going to show you
2 what is State's 184. What area of the vehicle are
3 we looking at there?

4 A. So that's an overhead view look in the
5 center console of the vehicle.

6 Q. Okay. And which vehicle -- which
7 firearm was located in this area?

8 A. Right there is the box you can see
9 under the paperwork it's a Springfield XD 9mm in
10 this case.

11 Q. That was a 9mm?

12 A. 9mm.

13 Q. So you knew it was unrelated to the
14 murder?

15 A. Yes.

16 Q. Next we're going to take a look at 230.
17 What area of the vehicle are we looking at here?

18 A. So this is on the rear passenger door
19 and that is a briefcase, looks like a dog chewed on
20 the corner on the floorboard.

21 Q. All right. I'm going to show you
22 another view of that here, State's 187.

23 A. That's just a further back view
24 probably before they moved the white pillow thing
25 before finding the briefcase in the rear.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. Now, just to clarify, which
2 firearm was found in this briefcase?

3 A. So in this briefcase was a loaded
4 Kimber .45.

5 Q. All right. And knowing that that was a
6 .45, can you tell us whether or not that was taken
7 into evidence?

8 A. It was.

9 Q. And can you tell us whether it was
10 submitted to the State Law Enforcement Division for
11 firearms analysis?

12 A. It was.

13 Q. In comparison to any evidence recovered
14 from the crime scene?

15 A. Correct.

16 Q. And just to clarify, can you tell us
17 whether or not that weapon being the Kimber .45 was
18 excluded as being the murder weapon?

19 A. It was excluded.

20 Q. Can you tell us, Detective Burt,
21 throughout this investigation, you're familiar with
22 the recovery of the box for the Springfield .45?

23 A. Yes.

24 Q. Which was found where?

25 A. It was on a shelf in the master bedroom

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 closet.

2 Q. Can you tell us whether or not this
3 Springfield .45 has ever been recovered?

4 A. No, it has not.

5 Q. What action has law enforcement taken
6 to attempt to recover that Springfield .45 that had
7 the box in the master bedroom closet?

8 A. It's currently entered into NCIC which
9 is a national data base. So if anybody runs it, it
10 will come back and alert us.

11 Q. Has it ever been recovered by any
12 agency?

13 A. It has not.

14 Q. Now, you mentioned the receipts and I
15 believe you got them up there with you?

16 A. Yeah, I broke the seal, but I didn't
17 pull them out yet.

18 Q. Can you tell us whether or not you were
19 able to determine if any of these receipts involve
20 purchases made throughout the time period of
21 September 2nd through September 5th after the
22 Defendant left Lexington County?

23 A. Yes.

24 Q. I want to refer you back to September
25 2nd being a Monday. As part of your investigation,

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 | who actually retrieved that video that we saw from
2 | 8:04 a.m. on Monday the 2nd?

3 | A. I went and retrieved the video.

4 | Q. From Circle K?

5 | A. Yes.

6 | Q. Were you ever able to find any
7 | expenditures or actions by the Defendant, Vincent
8 | Shivers, in the State of South Carolina after he
9 | was observed on that Circle K video at 8:04 a.m. on
10 | September 2nd?

11 | A. Can you repeat that?

12 | Q. Yes. Did you ever find any
13 | expenditures or actions by the Defendant in the
14 | State of South Carolina following that 8:04 a.m.
15 | purchase of gasoline at the Circle K on St. Andrews
16 | Road?

17 | A. Not in South Carolina.

18 | Q. How did you go about attempting to
19 | obtain information about any expenditures that he
20 | may have taken following that gas purchase at 8:04
21 | a.m. on September 2nd?

22 | A. So during the investigation we found
23 | numerous financial documents and sent them search
24 | warrants to attempt to locate him that way for
25 | purchases.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. Can you tell us whether or
2 not that included an American Express account?

3 A. Yes.

4 Q. And whose name was that American
5 Express account in?

6 A. Vincent Shivers.

7 Q. I'm going to show you some documents --

8 MS. MAYES: And I believe these are
9 pursuant to stipulation, Your Honor, being 151.

10 THE COURT: Okay.

11 Q. Looking at State's 151, you're familiar
12 with the information obtained from American
13 Express?

14 A. Yes.

15 Q. Does that cover the time period from
16 September 2nd on until the date of his arrest on
17 September 5th?

18 A. Yes, we got before and after.

19 Q. With that information at hand, Sergeant
20 Burt, how if at all were you able to backtrack and
21 obtain any video or records as to his whereabouts
22 and actions between September 2nd and September
23 5th?

24 A. We were actually able to establish a
25 pretty good timeline.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. So I want to talk with you
2 about that a little bit more. September 2nd,
3 Circle K 8:04 a.m., we know that is in Lexington
4 County?

5 A. It is.

6 Q. Or within the St. Andrews Road area.
7 How close is that location to I-26?

8 A. It's probably a mile or two.

9 Q. Okay. When do you next see any type of
10 action or purchase by Vincent Shivers?

11 A. September 3, 2019 which is the
12 following day at approximately 7:15 a.m. at a
13 Circle K in Tully, New York.

14 Q. And how did you learn that he had been
15 in Tully, New York?

16 A. He made an ATM withdraw at the Circle K
17 as well as a purchase.

18 MS. MAYES: And I believe pursuant to
19 stipulation as well, Your Honor, the Circle K video
20 and records being State's 144, 145 and 146.

21 THE COURT: Okay. Then they're in by
22 stipulation.

23 (WHEREUPON, State's Exhibit Numbers
24 144, 145 and 146 were entered)

25 THE COURT: Again, I'll tell the jury,

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 | when the lawyers agree to something it's a
2 | stipulation and you are to treat it as a true fact.

3 | Q. Now, looking here again we're now on
4 | Tuesday, September 3rd, 7:15 a.m., did you observe
5 | the video yourself?

6 | A. Yes, at the New York, yes.

7 | Q. And can you tell us whether or not this
8 | is a still shot from that video?

9 | A. It is.

10 | Q. And what if any action is the Defendant
11 | observed taking during that interaction at Circle K
12 | in Tully, New York?

13 | A. So he's going to make a withdraw from
14 | that -- the ATM right here and he also makes a
15 | purchase at the counter.

16 | Q. Okay. And can you tell us in 2019 with
17 | the physical appearance of Vincent Shivers?

18 | A. Yeah, that's how he looked in 2019.

19 | Q. Okay. And then State's 146, can you
20 | tell us whether or not you were able to identify
21 | the individual at the ATM machine?

22 | A. That's him right there.

23 | MS. MAYES: Permission to publish, Your
24 | Honor, State's 144?

25 | THE COURT: Yes, ma'am.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. And the time depicted on the video at
2 this point?

3 A. 7:20 a.m.

4 Q. Were you able to determine how much
5 money was taken out of the ATM machine at this
6 Circle K location?

7 A. No.

8 Q. Okay. Now, what is the next
9 transaction that occurs for Vincent Shivers?

10 A. So it will still be on Tuesday,
11 September 3, 2019 and that was just about 7:20.
12 The next time as at 11:02 a.m.

13 Q. All right. 11:02 a.m., what action did
14 you determine occurred?

15 A. So that is actually from the time a
16 transaction was completed at Walmart at 5033
17 Transit Road in Williamsville, New York.

18 Q. All right. Williamsville, New York.
19 Now, was this information obtained pursuant to a
20 receipt recovered from the vehicle or from American
21 Express?

22 A. So this actually we found out from a
23 receipt in the vehicle because it was a cash
24 transaction, otherwise, you wouldn't be able to
25 pull it up from a credit card.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. And what was the amount of that cash
2 transaction?

3 A. The total was \$97.85.

4 MS. MAYES: I believe that's State's
5 189 in evidence.

6 Q. Sergeant Burt, take us through this
7 particular receipt. What items were you able to
8 determine were purchased in cash at that Walmart?

9 A. So they're all listed on this side. Up
10 here it's got the address. Down here is the date
11 and the time of this transaction. You can see the
12 cash tended, the total amount, his change that was
13 due. Looks like he bought a four pack of shirts;
14 Pantene; men's socks; 300 count swabs and I guess
15 that's Q-tip. I can't really read that, it's
16 something based. Four back of boxers; a bath
17 sheet, I'm assuming is a towel; another four pack
18 of shirts; OTC spec water, over the counter. I'm
19 assuming that's what that means. BA, I don't know
20 what that is either, BASKFX and then CH -- I don't
21 know the top one either. That's just another title
22 and the purchased amounts on the side here.

23 Q. Okay. So based on this information you
24 learned that clothing had been purchased?

25 A. Yes, it was clothes.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. And what if anything was determined
2 next to have occurred on September 3, 2019?

3 A. So next he shows up at the Bank of
4 America at 5529 Main Street still in Williamsville,
5 New York.

6 Q. And the time on that?

7 A. 11:49 a.m.

8 Q. And that's Bank of America?

9 A. Yes.

10 Q. Were you able to determine whether he
11 went inside that location?

12 A. Yes, I got the transaction while he was
13 in there as well as surveillance footage.

14 Q. Were you able to determine whether or
15 not he retrieved cash at this location being the
16 Bank of America in Williamsville, New York?

17 A. He did. He took out \$3500 cash.

18 MS. MAYES: This would be State's 142,
19 I believe, by stipulation as well, Your Honor,
20 regarding the video and the record. 181 and 143.

21 MR. SWERLING: Yes, Your Honor, we
22 stipulate.

23 THE COURT: All right. Then it's
24 entered into evidence.

25 (WHEREUPON, State's Exhibit Numbers 181

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 and 143 were entered)

2 Q. Again, were you able to identify this
3 individual?

4 A. Yes. They actually had two camera
5 views. This one is from where the teller was at
6 and it's right there at his face.

7 Q. All right. And were you also able to
8 acquire any record with this showing the amount of
9 cash that was withdrawn?

10 A. Yes, it was \$3,500.

11 Q. I'm going to show you what is State's
12 181. Could you show us where on this document that
13 information is depicted?

14 A. So it's Bank of America, his name. If
15 you look down here it talks about the \$3500.
16 Teller -- it's teller cash withdraw.

17 Q. All right. And you've also observed
18 the video?

19 A. I have.

20 Q. Is that consistent with the withdrawal
21 of that amount of cash by Vincent Shivers on this
22 date and time?

23 A. Yes, and also right there is the date
24 on there.

25 Q. All right.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 MS. MAYES: This would be 142 to
2 publish, Your Honor.

3 THE COURT: Okay.

4 Q. So that is Williamsville, New York.
5 What if anything did you observe occur after that
6 time?

7 A. So the next time will be same day,
8 September 3, 2019, it will be crossing the Rainbow
9 Bridge at 1:14 p.m.

10 Q. All right. And I'm going to show you
11 some documents already in evidence being State's
12 154 and State's 155. What role did you play in
13 obtaining these documents?

14 A. These were some of the documents that
15 were obtained through the Mutual Legal Aid Treaty
16 with Canada and the US.

17 Q. So also on September 3rd what time did
18 Vincent Shivers cross the border into Canada?

19 A. At 1:14 p.m. And in this report it was
20 run for the whole year. That was the only
21 crossover at that Rainbow Bridge.

22 Q. All right. What if any action did your
23 investigation determine was taken next?

24 A. So at this point when we learned he
25 crossed and he was alone it's when it shifted to a

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 he's our suspect.

2 Q. And just can you clarify a little bit
3 more what you mean by that?

4 A. So originally we didn't know where he
5 was. A lot of the stuff in the timeline with why
6 he was making these withdrawals, we didn't know
7 that at the time, but it came together quickly on
8 September 5th that he had crossed alone and wasn't
9 under any kind of duress with another party in the
10 car.

11 Q. All right. And let me ask you this,
12 originally going back to September 3rd on the date
13 you arrived at the residence, did you consider the
14 possibility that Vincent Shivers could have been a
15 victim?

16 A. Yes, we didn't have any idea what
17 happened to him.

18 Q. And upon observing the border crossing
19 video, we've already seen it as evidence in this
20 case, but you had a chance to see it yourself?

21 A. Yes, I did.

22 Q. All right. And you mentioned at this
23 point he became a suspect. Can you tell us what
24 actions if any you could account for for Vincent
25 Shivers on the date of September 3, 2019 after

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 crossing the border?

2 A. So once he's in another country, the
3 sheriff's department can't do anything about that.
4 So we'd have to contact the US government through
5 the Marshal Service and then they would coordinate
6 with the government to try to locate him.

7 Q. All right. And when you say coordinate
8 to try and locate, can you tell us whether or not
9 that's ordinary action when someone has left the
10 United States?

11 A. Yes, it would be another way for us to
12 try to find him.

13 Q. Okay. And can you tell us whether or
14 not that's an ordinary or routine action to alert
15 authorities of any other nationalities?

16 A. It is.

17 Q. Okay. And can you tell us whether or
18 not Canadian authorities were alerted?

19 A. They were through the Marshal Service.

20 Q. All right. Now, what if any records
21 were obtained regarding lodging for Vincent Shivers
22 during this time period?

23 A. So we got receipts from hotel stays.

24 Q. Okay. Where if any location did you
25 determine he stayed on September 3, 2019?

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 A. So on September 3rd, it was at the Four
2 Points by Sheraton located at 6455 Fallsview
3 Boulevard which is right across the border in
4 Niagara Falls.

5 Q. Okay. Now, you say Niagara Falls, is
6 part of Niagara Falls in Canada?

7 A. It is.

8 Q. And what region or province within
9 Canada?

10 A. Ontario.

11 Q. All right. What time if at all were
12 you able to determine that he checked in at the
13 Sheraton?

14 A. We have the receipt, I believe it's
15 2:51 p.m.

16 Q. Okay. I'm going to show you a document
17 and ask you whether or not you recognize it, this
18 being State's 152.

19 A. It is.

20 Q. Okay.

21 MS. MAYES: And I believe this also by
22 stipulation, Your Honor.

23 MR. SWERLING: That's correct.

24 THE COURT: All right. It's in.

25 (WHEREUPON, State's Exhibit Number 152

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 was entered)

2 Q. 152, take a look here. This is a photo
3 copy. All right. Looking at that, were you able
4 to verify the address at that location?

5 A. Yes, it's listed right there.

6 Q. All right. And the time in which the
7 room was -- the check-in time?

8 A. So you have arrival date and they have
9 it 3 September '19 and that's 14:51.

10 Q. All right. And convert that for us,
11 please?

12 A. 2:51 p.m.

13 Q. All right. 2:51 p.m. Now, Canada, do
14 they also acknowledge Eastern Standard Time just as
15 we do here?

16 A. Yeah, always.

17 Q. All right. And originally was this
18 room for one night or two nights?

19 A. Well, the receipt shows an arrival date
20 and then a departure date of 5 September '19.

21 Q. All right. And does this show or
22 indicate in what format this room was paid for?

23 A. It does. It's down here at the bottom.
24 It says American Express.

25 Q. All right. Now, you indicated the

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 departure date is September 5th, does the receipt
2 indicate that both nights were paid for?

3 A. Yes.

4 Q. Indicating that both night were paid
5 for, did you determine if he actually stayed there
6 on the 3rd and the 4th or was he somewhere else on
7 the 4th?

8 A. No, he was in another hotel on the 4th.

9 Q. Okay. When do you see any other
10 financial transaction for Vincent Shivers?

11 A. So after September 3, 2019 which was at
12 2:51 p.m. at the Sheraton, the next time you see
13 him that we have a record of is September 4, 2019
14 at 1:51 p.m. purchasing luggage at Samsonite.

15 Q. Purchasing luggage?

16 A. Yes.

17 Q. I'm going to ask you to retrieve this
18 item, State's 190 in evidence.

19 Now, you were present for the search of
20 the home of Vincent Shivers?

21 A. Yes.

22 Q. And you're familiar with all items
23 retrieved therein?

24 A. I am.

25 Q. Can you tell us whether or not you

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 recall him having luggage in his master bedroom
2 closet?

3 A. Yes, as depicted.

4 Q. State's 85, State's 80, State's 78.

5 And you said this receipt is for what location?

6 A. Samsonite.

7 Q. Tell us the date of the purchase at
8 that Samsonite store, Detective?

9 A. So the date listed here as September 4,
10 2019.

11 Q. And what time was the purchase?

12 A. I think it's cut out of view -- I'm
13 sorry, it's right there. 1:51 p.m.

14 Q. And what was the location of that
15 purchase?

16 A. 7500 Lundy's Lane A11 in Niagara Falls,
17 Ontario.

18 Q. All right. And does the receipt break
19 down exactly what was purchased at that location?

20 A. Yes, it's listed as a Spinner 25, a two
21 pack vinyl ID tags and a tote, 55/21.

22 Q. All right. So the Spinner 25, are you
23 familiar with that luggage?

24 A. Doing an internet search, yes.

25 Q. Can you tell us whether or not that's a

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 rolling piece of luggage?

2 A. Yes, it was.

3 Q. So after this purchase of luggage at
4 the Samsonite store at 1:51 p.m., what if any
5 actions do you see next for Vincent Shivers on
6 September 4th?

7 A. This was also a cash transaction and
8 the next one was American Express at 2:24 p.m. he
9 purchased fuel.

10 Q. All right. And what was the name of
11 the location in which the fuel was purchased?

12 A. Lundy's Lane SO. And it's at 6192
13 Lundy's Lane, Niagara Falls, Ontario.

14 Q. Also in Niagara Falls?

15 A. Yes.

16 Q. And looking up ahead we see the
17 Samsonite receipt, was that also Niagara Falls?

18 A. Yes.

19 Q. What if any action do you see next?

20 A. So the next transaction we see will be
21 on September 4th at 3:34 p.m. He booked a flight
22 to London along with a hotel on Expedia.

23 Q. And what was the time of that purchase
24 for the airline flight for London, meaning the time
25 of the Expedia purchase?

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 A. 3:34 p.m.

2 Q. And do you have the American Express
3 record with you?

4 A. Yes.

5 Q. Can you tell us whether or not it is
6 depicted in that American Express record?

7 A. Yes, it shows up as Travel Escape and
8 Air Canada.

9 Q. All right. And you said that time
10 again?

11 A. 3:34 p.m.

12 Q. And what was the cost of that flight by
13 Air Canada to London?

14 A. Air Canada is listed at \$1,414 and then
15 the Travel Escape purchase is \$1,585. And then the
16 other Travel Escape purchase is just listed as a
17 dollar on here and it probably hadn't gone through
18 all the way.

19 Q. Okay. What is the next action you see
20 for Vincent Shivers based on financial transactions
21 on September 4th?

22 A. So at 6:36 p.m. he checked into the
23 Marriott Toronto Airport.

24 Q. 6:24 p.m.?

25 A. 6:36.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. Now, you mentioned that there was
2 another room already paid for at the Sheraton?

3 A. Yeah. According to the receipts from
4 the Sheraton it looked like he was charged for two
5 nights.

6 Q. Okay. But you show him on September
7 4th at a Marriott?

8 A. Yes, it's on video as well as through
9 American Express.

10 Q. All right. And what is the location of
11 this Marriott?

12 A. Give me one second to refer to it.
13 It's not written down in this note. It's in
14 Toronto, I'm just trying to find the exact address.

15 Q. I'm going to show you what is State's
16 148 and 147.

17 MS. MAYES: I believe these are also by
18 stipulation these records of Marriott and 149.

19 MR. SWERLING: Stipulated.

20 THE COURT: Okay. It's entered.

21 (WHEREUPON, State's Exhibit Numbers
22 147, 148 and 149 were entered)

23 Q. I'm going to show you 149 and ask you
24 whether or not you're familiar with what is
25 depicted in 149 in evidence?

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 A. Yes, that's him checking into that
2 hotel.

3 Q. And now I'm going to show you the
4 record, 148 also in evidence by stipulation. I'm
5 going to get a little closer on this.

6 Were you able to determine a street
7 address for that location?

8 A. It's listed at the bottom.

9 Q. And this is the Marriott Airport?

10 A. Yes. The Toronto Airport Marriott 901
11 Dixon Road in Toronto, Ontario.

12 Q. All right. And what was the amount of
13 this purchase?

14 A. So there's one listed for 240 and
15 another one for 152. But the actual -- the actual
16 receipt that will have all the totals once it's
17 completed.

18 Q. All right. So this receipt does it
19 cover the cost of the room?

20 A. Yes.

21 Q. As well as the bistro cost?

22 A. Yes, it's a restaurant at the hotel.

23 Q. All right. And what was the amount for
24 the room?

25 A. The room is listed as 234.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. And then did you also
2 receive an itemized listing for the bistro cost?

3 A. Yes, we were provided with the actual
4 receipts from two different purchases at the
5 restaurant.

6 Q. I'm going to show you what is
7 State's -- same exhibit but for September 4th, what
8 purchases were made?

9 A. So a Beyond Meat Burger and four double
10 gray geoses and tonics and a cobbler.

11 Q. And what is the time of this
12 transaction on September 4th?

13 A. 7:03 p.m. And I'm not -- that might
14 have been the time it was open because at the
15 bottom it has 10:14 p.m. so that might have been
16 when it was closed out.

17 Q. All right. And what if any type of tip
18 was left?

19 A. The meal cost \$109.61 and he left the
20 same as the tip.

21 Q. All right. So he left a \$109.61 tip as
22 well?

23 A. Yes.

24 Q. So the total cost for this was 219?

25 A. Yes.

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Q. Does it contain some type of signature
2 as well?

3 A. It does. It's a printed last name as
4 Shivers and then it has a signature as well as a
5 handwritten note at the bottom.

6 Q. All right. Now, I'm going to show you
7 what's also from Marriott. What date is reflected
8 on this receipt?

9 A. September 5, 2019 and it looks like it
10 was started 11:33 a.m. and then closed out at 11:58
11 a.m.

12 Q. Okay. And on September 5th, what type
13 of purchase was made and what time?

14 A. The time again was listed at start at
15 11:33 a.m. and closed out 11:58 a.m. and he ordered
16 a Cobb salad and added chicken.

17 Q. Is this also from the bistro?

18 A. Same restaurant.

19 Q. Now, following these receipts from the
20 Marriott, what if any transactions did you
21 determine next?

22 A. So after this appeared to be lunch, the
23 next transaction is on September 5, 2019 a purchase
24 was made at a Walmart at 2267 Islington Avenue.

25 Q. And what was the time of this

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 transaction?

2 A. 1:05 p.m.

3 Q. And what was the amount of this
4 purchase?

5 A. \$89.90.

6 Q. Can you tell us what city or province
7 this purchased occurred?

8 A. It should be still up in Toronto.

9 Q. What did you observe after that?

10 A. So the next transaction is September 5,
11 2019, a purchase at LEE Kitchen at the Toronto
12 Pearson International Airport at 4:57 p.m.

13 Q. All right. Do you see any transactions
14 after that time?

15 A. No.

16 Q. Okay. And then you're familiar based
17 on the records obtained from the airport as to the
18 location in which he was arrested?

19 A. Yes, he was arrested at Terminal 1.

20 Q. Okay. And Terminal 1 determined that
21 he was at what gate?

22 A. I believe it was E76.

23 Q. Air Canada?

24 A. Yes.

25 Q. And that flight was for what location

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 or destination?

2 A. London Heathrow.

3 Q. Now, when you went through his truck
4 and I know you've identified the briefcase that was
5 seen in the truck, did you see any other
6 indications of planning for a trip?

7 A. No, there was not clothing or luggage.

8 Q. Other than the luggage that was
9 purchased in Canada from the Samsonite store, are
10 you aware of any other luggage in this case
11 recovered in that vehicle?

12 A. Not in the vehicle.

13 MS. MAYES: And this would be the
14 record of the Canadian Airport Security this would
15 be also subject to stipulation.

16 THE COURT: And what number is that
17 one?

18 MS. MAYES: 133, Your Honor.

19 THE COURT: 133. Okay. It's in.

20 (WHEREUPON, State's Exhibit Number 133
21 was entered)

22 Q. Was this record also obtained regarding
23 the Defendant's location there at Terminal 1?

24 A. Yes, it was turned over to us.

25 Q. Okay. Now, you had a chance to review

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 the Verizon records for the Defendant, Vincent
2 Shivers?

3 A. Yes.

4 Q. Did that include ingoing and outgoing
5 texts?

6 A. Yes.

7 Q. Were you able to also retrieve the
8 content of any texts within the timeframe that you
9 requested?

10 A. Yes.

11 Q. And that involved the time period of
12 late August through September 5th?

13 A. Yes.

14 Q. Can you tell us whether or not you were
15 able to determine any prior planning for a trip to
16 Canada?

17 A. No.

18 Q. Or any prior planning for a trip to
19 London?

20 A. No.

21 Q. Sergeant Burt, did you attend the
22 autopsy of Roselynn Cedeno?

23 A. I did.

24 Q. In that process, did you recover items
25 directly from her body?

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 A. I did.

2 Q. Did that include her clothing?

3 A. It did.

4 Q. Can you tell us whether that also
5 included any fingernail scrapings?

6 A. It did?

7 Q. Can you tell us whether or not that
8 included what's known as a blood spot or a DNA
9 standard?

10 A. It did.

11 THE COURT: Ms. Mayes --

12 MS. MAYES: Yes, Your Honor.

13 THE COURT: Can I just see y'all for
14 just one second.

15 (WHEREUPON, there was a bench
16 conference)

17 THE COURT: Mr. Foreman, we got a
18 couple of people that need a bathroom break. So I
19 don't know if the jury would like to go back to the
20 jury room just for a few minutes and I'll call you
21 right back out. When one goes, we all have to go.
22 Remember, no talking amongst yourselves about this
23 case.

24 (WHEREUPON, the jury exits the
25 courtroom at 11:48 a.m.)

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 (WHEREUPON, there was a short break)

2 THE COURT: All right. Let's bring
3 them in.

4 (WHEREUPON, the jury enters the
5 courtroom at 12:03 p.m.)

6 THE COURT: All right. Just to let
7 y'all know we've ordered y'all some pizza that
8 should be here right at 1 o'clock. So we'll be
9 taking a break then. Okay.

10 I got a note from the jury, but we'll
11 address it right when I excuse them. I think it
12 will be fine. All right. Go ahead.

13 Q. All right. You attended the autopsy
14 for Roselynn Cedeno?

15 A. I did.

16 Q. And can you tell us during the course
17 of that autopsy, where was that autopsy conducted?

18 A. At MUSC in Charleston.

19 Q. And can you tell us whether or not a
20 certain blood spot or DNA standard was collected
21 from Roselynn Cedeno for the purpose of potential
22 DNA analysis?

23 A. It was.

24 Q. Can you tell us whether or not
25 fingernail scrapings were taken from Roselynn

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 Cedeneno?

2 A. They were.

3 Q. Fingernail clippings. I am going to
4 show you what is State's 191 and 194 and ask
5 whether or not you were present when those
6 clippings were retrieved from Dr. Beaver?

7 A. Yes.

8 Q. Were you able to review the autopsy?

9 A. Yes. They have a window where you can
10 watch everything happen.

11 Q. Okay. And as you're viewing the
12 autopsy, did you observe him take samples or
13 standards from Roselynn Cedeneno?

14 A. Yes, and they're bagged up and sealed.

15 Q. And you observed those items being
16 sealed?

17 A. Yes.

18 Q. And were they then handed to you during
19 the course of this same autopsy?

20 A. Yes, and I was given a receipt for the
21 items.

22 Q. Okay.

23 MS. MAYES: This would be State's 191
24 and 194, Your Honor.

25 Q. Did they remain sealed after you

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 retrieved them?

2 A. After that I brought them back to the
3 sheriff's department and then they were logged into
4 evidence.

5 Q. Did they remain sealed during that
6 entire time?

7 A. They did.

8 Q. And do you know if whether or not they
9 were eventually submitted to the State Law
10 Enforcement Division for analysis?

11 A. They were.

12 MS. MAYES: State's 191 and 194 for
13 evidence.

14 THE COURT: Any objection?

15 MR. SWERLING: Judge, it's my
16 understanding that the State is using Detective
17 Burt as a chain witness, but they intend to call
18 the people from the lab. So with that in mind, we
19 don't have any objection; correct?

20 MS. BARBIER: That's correct, Your
21 Honor.

22 THE COURT: Okay. Do you want to wait
23 for me to put them in until --

24 MR. SWERLING: Well, I just want to
25 make sure the record reflects that is going to be

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 done, but whatever is easier.

2 THE COURT: I want to make sure the
3 chain -- I'm going to make a note of it, I'll make
4 sure the chain is complete.

5 MS. MAYES: We can leave them for ID
6 only at this time, Your Honor.

7 THE COURT: If we could and then when
8 they identify them then we'll move them into
9 evidence.

10 MR. SWERLING: What I'm saying is
11 subject to being linked up.

12 THE COURT: Right. I'm with ya.

13 Q. Sergeant Burt, can you tell us whether
14 or not the clothing of Roselynn Cedenno was
15 retrieved as evidence in this case as well?

16 A. It was.

17 Q. And can you tell us whether or not that
18 includes being photo documented?

19 A. It was.

20 Q. I'm going to show you what is State's
21 231 and 232 and ask if you're familiar with these
22 photographs?

23 A. I am.

24 Q. Are these the items in the custody of
25 the Lexington County Sheriff's Department?

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 A. It is.

2 MS. MAYES: This would be 231 and 232
3 for evidence, Your Honor.

4 MR. SWERLING: Subject to being linked
5 up.

6 MS. MAYES: This would be for evidence,
7 Your Honor. He has identified it as a fair and
8 accurate representation of the clothing that he
9 observed.

10 MR. SWERLING: I just need to --

11 THE COURT: Y'all want to come up?

12 (WHEREUPON, there was a bench
13 conference)

14 THE COURT: Okay. They're admitted
15 without objection.

16 MR. SWERLING: Nothing additional.

17 THE COURT: No additional objections
18 from what's previously been noted for the record.

19 (WHEREUPON, State's Exhibit Numbers 231
20 and 232 were admitted)

21 Q. I did want to cover with you whether or
22 not you had an opportunity to research the
23 distance, I know you testified that you traveled
24 it. Do you also have information as to the
25 distance between that location and Toronto, Canada

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 and Lexington County?

2 A. Time wise about 13 hours.

3 Q. Thirteen hours?

4 A. Yes.

5 Q. I'm going to show you what is State's
6 54 for demonstrative purposes.

7 THE COURT: No objection?

8 MS. MAYES: This is demonstrative only,
9 Your Honor. This would be State's 54.

10 THE COURT: Okay.

11 Q. Looking here at State's 54, can you
12 tell us whether this aid also reflects the multiple
13 purchases that you recorded and investigated from
14 the point of Lexington County, South Carolina up to
15 Toronto, Canada?

16 A. It is.

17 Q. And in each of these locations were you
18 able to obtain video surveillance or footage if
19 available?

20 A. If it was available, yes.

21 Q. And upon examination of each of these
22 items of video surveillance, did you ever see
23 anyone else in the company of Vincent Shivers?

24 A. No, he was always alone.

25 Q. Now, there was previously testimony

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 | regarding some incoming and outgoing calls
2 | regarding State's 123, already in evidence. This
3 | being from the phone extraction of Roselynn Cedenó.
4 | I'm going to show you what is State's 17, also
5 | already in evidence and ask you whether or not
6 | you're familiar with Deputy Joshua Hale?

7 | A. I am.

8 | Q. Can you tell us whether or not on the
9 | date of September 3rd you were able to determine
10 | any of the phone calls to the phone of Roselynn
11 | Cedenó being attributed to Deputy Joshua Hale?

12 | A. From her phone or from the call log --
13 | or the Verizon records?

14 | Q. Both.

15 | A. From the Verizon records.

16 | Q. Okay. And what number did you
17 | determine Joshua Hale to have?

18 | A. 603-443-0171.

19 | Q. All right. Now, when we look at this
20 | bottom itemization here which is September 3, 2019
21 | at 11:49 a.m., has this document, a phone
22 | extraction, already been converted as appropriate
23 | to Eastern Standard Time?

24 | A. Yes. That's showing the time here.

25 | Q. That would be real time?

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 A. Yes.

2 Q. We don't see an incoming number, were
3 you able to determine what call was made to the
4 phone of Roselynn Cedeno at 11:49 on September 3rd?

5 A. That would coincide with Deputy Hale's
6 calls.

7 Q. And you determined that how?

8 A. Through the Verizon call detail
9 records.

10 Q. All right. Now, I'm going to show you
11 page 2. Again, no identifying number here. No
12 identifying here. And no identifying number here.
13 All three calls again on September 3rd being 11:48,
14 11:39 and 11:38. Were you able to determine based
15 on the Verizon phone records of Roselynn Cedeno
16 what the actual incoming call number was?

17 A. There's several listed here and they're
18 in GMT.

19 Q. All right. And what is the number that
20 you determined to be calling Roselynn Cedeno at
21 11:38, 11:39 and 11:48?

22 A. It's all the same. It's the
23 603-443-0171, it's Deputy Hale.

24 Q. Okay. So all of the numbers that were
25 blocked or not identified were attributed to who?

NICHOLAS BURT - DIRECT EXAMINATION BY MS. MAYES

1 A. Deputy Hale.

2 Q. All right. And then we see a series of
3 calls not answered, were you able to account for
4 all of these calls, Sergeant Burt?

5 A. Yes.

6 Q. The date and time of the last answered
7 call was when?

8 A. 9/1/2019 at 11:27 a.m., it's a call to
9 864-978-2627 and she has the contact listed as
10 Vincent.

11 Q. A.m. or p.m.?

12 A. A.m.

13 Q. And then looking here at the front of
14 the phone extraction I wanted to ask you about one
15 more number and that being the number which doesn't
16 have a saved contact identification, but it ends in
17 the 5863. 5863 at 1:15 and 1:15 also on September
18 3rd. Were you able to identify that number?

19 A. I was. It's an animal control officer
20 who had attempted to call after scanning one of the
21 dogs from the scene.

22 Q. A Lexington County animal control
23 officer?

24 A. Correct.

25 Q. And that was for the safety of the

NICHOLAS BURT - CROSS-EXAMINATION BY MR. SWERLINGS

1 animals at the scene?

2 A. Yes. They had been on scene and
3 collected the dogs, apparently one had a chip and
4 then when they scanned the chip, that number -- the
5 number they were calling was associated with the
6 chip.

7 Q. The pet of Roselynn Ceden?

8 A. Yes, the pet.

9 Q. And, finally, Sergeant Burt, what's
10 shown here in State's 232 reflects what?

11 A. That's a photograph of the shirt she
12 was wearing.

13 Q. Retrieved from autopsy?

14 A. Yes.

15 Q. Is that the front of the shirt or the
16 back of the shirt?

17 A. That would be the front of the shirt.
18 You can see the polo emblem enlargeable on the
19 right.

20 Q. 231?

21 A. It's the back of the same shirt?

22 Q. Thank you.

23 MS. MAYES: Beg the Court's indulgence.
24 Nothing further at this time, Your Honor.

25 THE COURT: Okay. Mr. Swerling.

NICHOLAS BURT - CROSS-EXAMINATION BY MR. SWERLINGS

1 CROSS-EXAMINATION

2 BY MR. SWERLING:

3 Q. How are you?

4 A. Good.

5 Q. Let me just kind of summarize where I
6 think we are. The Lexington County Sheriff's
7 Department responded to the residence on the 3rd of
8 September of 2019 at 11:04 I believe I wrote down?

9 A. I believe that's correct.

10 Q. Approximately. That was when the call
11 went out and they arrived shortly thereafter.

12 The -- what I -- we just had some
13 testimony a little while ago that the video and the
14 charge at the Circle K in Lexington was on the 2nd
15 of September at 8:04 after it was converted;
16 correct?

17 A. Yes.

18 Q. Okay. So the first thing in line here
19 is a Circle K at 8:04 on the 2nd and then on the
20 3rd is when Lexington County responded to the
21 residence?

22 A. Yes.

23 Q. Okay. And I believe you arrived on the
24 scene on the 3rd at 12:35, is that military time?

25 A. No, it's about 12:15.

NICHOLAS BURT - CROSS-EXAMINATION BY MR. SWERLINGS

1 Q. 12:15, okay.

2 A. Sorry about that. That's when I was
3 notified. I did arrive about 12:35.

4 Q. So I was right?

5 A. Yes.

6 Q. That's all right. I like to be right
7 once in a while. Okay. Now, you conferred with
8 the liaison in your office and the Marshals office
9 about there was an NCIC bulletin put out and a bolo
10 put out and then in coordination with the Marshal
11 Service it was sent to Canada, is that correct?
12 The notification was sent to Canada?

13 A. So after we found out that he was
14 confirmed to have crossed, we have a TFO which is a
15 task force officer which is assigned to the
16 sheriff's department, but it operates as a US
17 Marshal and he was involved with notifying the
18 Marshals Services.

19 Q. And what I wrote down was that on
20 September 5th of 2019 at 11:26 he was seen crossing
21 the Rainbow Bridge?

22 A. No, the time was 1:14 p.m. on September
23 3rd is when he actually crossed. We didn't find
24 out about it until the 5th.

25 Q. Okay, I see. So you found out about it

NICHOLAS BURT - CROSS-EXAMINATION BY MR. SWERLINGS

1 when?

2 A. We didn't find out that he had crossed
3 until September 5th.

4 Q. Okay. So, but he crossed on September
5 3rd at 13:14, is that what you're saying?

6 A. Correct.

7 Q. Okay. And then you found out about it
8 I think there was a video sent on the 5th of
9 September at 11:26 you found out about that he had
10 crossed into Canada on the Rainbow Bridge; is that
11 correct?

12 A. Yes, when I found out about it on the
13 5th.

14 Q. Yeah, that's what I'm saying?

15 A. Yes.

16 Q. All right. And then on the 5th of
17 September he was arrested in Canada?

18 A. Correct, later on that evening.

19 Q. Okay. The -- let's see. The ticket
20 that I believe you testified that you said you saw
21 the charge on the credit card, the ticket to London
22 and I believe it's in evidence, but I just wanted
23 to -- the ticket shows that he was booked to
24 London, England from Toronto leaving on the 5th at
25 3:35 p.m. and there was a return flight on the 15th

NICHOLAS BURT - CROSS-EXAMINATION BY MR. SWERLINGS

1 of September at 11:50; is that correct?

2 A. Yeah. So it's on Expedia and it looks
3 like it's booked together as a hotel and a flight.
4 And in my experience with Expedia if you book it
5 together while you're going through picking your
6 hotel, your flight, it makes you pick a return date
7 and return flight.

8 Q. Okay. But we do have the ticket that
9 you got or has been put into evidence I believe by
10 -- I believe it's been put in by the State before,
11 I just got a copy here, but does show there was a
12 booking to leave on the 5th of September and return
13 on the 15th of September?

14 A. Yes, it did have a return date. I'd
15 have to look at it to confirm, but that does sound
16 correct.

17 Q. This is a copy of what Ms. Mayes put in
18 evidence.

19 A. I agree.

20 Q. And I believe from what I read here
21 that there was a booking at the Hilton London at
22 Heathrow Airport for the 6th of September 2019 and
23 a check out date at the Hilton London Heathrow
24 Airport Hotel on the 15th of September?

25 A. Yes.

NICHOLAS BURT - CROSS-EXAMINATION BY MR. SWERLINGS

1 Q. So it corresponds with the arrival and
2 then the departure by Mr. Shivers to England and
3 returning from England; correct?

4 A. Correct.

5 Q. Okay. So based upon those documents,
6 it appears that there was a return flight booked by
7 Mr. Shivers on the 15th?

8 A. Yeah, it looked like it was booked --
9 when you look at that piece of paper at the top it
10 has hotel and a flight --

11 Q. You're just saying it's combined when
12 you use Expedia?

13 A. Like a package when you go on and pick
14 both; correct.

15 Q. Based on these tickets -- based on what
16 you have here, there's no question there was an
17 intent to return based on these documents?

18 A. There was a return ticket purchase,
19 yes.

20 Q. Okay. Now, you have -- obviously we've
21 read a number of your reports that came from the
22 discovery. Okay. And everything is well
23 documented by you as to dates and times and many of
24 the things you've testified to here today. The --
25 he was arrested in Canada on the 5th of September.

NICHOLAS BURT - CROSS-EXAMINATION BY MR. SWERLINGS

1 I'm looking at a document that came from Jesse Dean
2 who testified here yesterday from the Canadian, I
3 guess it's the Toronto Police Department and it's a
4 correspondence to you dated it appears March 29,
5 2021 in which he tells you in that document for the
6 first time it appears what he says or alleges Mr.
7 Shivers said on the 5th of September 2019?

8 A. Yes. So when we first coordinated with
9 Toronto Police Services, after the arrest, I was
10 put in contact with a Detective Constable Charlene
11 Smith and she's the one I coordinated with to get
12 paperwork and documents. So that date is correct.
13 That is when I received those handwritten notes and
14 that additional document that you're referring to.

15 Q. So it appears to me that you did not
16 know -- or you were not told by Canadian
17 authorities that Mr. Shivers had made any kind of
18 comment or any kind of statement that would be
19 almost a year and a half later until 2021?

20 A. So the night he was arrested when I
21 talked to Detective Constable Smith and in speaking
22 with her about his demeanor, I was told of a just
23 kind of a generic he had made a suicidal comment.
24 But as to your question about that specifically
25 what was said, I did not have that until --

NICHOLAS BURT - REDIRECT EXAMINATION BY MS. MAYES

1 Q. That's what I'm talking about what
2 specifically Mr. Dean said Mr. Shivers said. It
3 took from September of 2019 until March of 2021 for
4 that to be communicated to the chief investigating
5 officer in this case?

6 A. Oh, it did. There were a lot of things
7 that took a while to get from Canada to the whole
8 start of going up there and get the truck, it was a
9 pretty long process.

10 Q. But based on your experience in this
11 field and being an investigator and detective and
12 obviously in charge of investigations, somebody
13 making a statement which would be a -- someone
14 could classify as being incriminating certainly
15 should have been given to you much earlier than
16 that?

17 A. Well, it's my understanding that it was
18 given to the Canadians just --

19 Q. No, that's not what I said though.
20 Listen to what I said. Do you as the chief
21 investigating officer in the case? This was your
22 case?

23 A. I did receive it.

24 Q. Yeah, in 2021?

25 A. Correct.

NICHOLAS BURT - RECROSS EXAMINATION BY MR. SWERLING

1 Q. That's what I'm saying. It was -- the
2 statement was supposedly made September 5, 2019,
3 but you as the chief investigating officer in this
4 case were not made aware of that statement until
5 March of 2021, that's pretty clear?

6 A. Yeah, I did receive.

7 Q. Pardon?

8 A. I did receive it, yes.

9 Q. On March 29, 2021?

10 A. Correct.

11 MR. SWERLING: That's all I have, Your
12 Honor.

13 THE COURT: Any redirect?

14 MS. MAYES: Just briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. MAYES:

17 Q. Do you authority in South Carolina to
18 issue a subpoena to Canadian law enforcement
19 authorities?

20 A. No.

21 Q. Okay. And do you have authority to
22 just go up there and review their documents and
23 case files?

24 A. No. As I said earlier, we had to go
25 through the Department of Justice to get a treaty

NICHOLAS BURT - RECROSS EXAMINATION BY MR. SWERLING

1 to get any of that stuff which took quite a while
2 to get that in and of itself.

3 Q. Once you did obtain those documents,
4 can you tell us whether or not there were notations
5 regarding the statement entered by Jesse Dean?

6 A. In their documents, yes.

7 Q. And can you tell us whether or not
8 following his arrest on September 5th you were
9 advised of the general nature of the statement?

10 A. As I said it was a generic talking
11 about demeanor he made some type of suicidal
12 comment, but I didn't have the context.

13 MS. MAYES: Thank you.

14 THE COURT: Anything else?

15 MR. SWERLING: Let me just add.

16 RECROSS EXAMINATION

17 BY MR. SWERLING:

18 Q. There's nothing for you -- there's
19 nothing to prevent you from calling him the
20 investigators up there in Canada; correct?

21 A. I didn't know who Jesse Dean was at the
22 time. I had only been put in contact with Charlene
23 Smith.

24 Q. Okay. And through Charlene Smith you
25 could have found out who arrested him at the

NICHOLAS BURT - RECROSS EXAMINATION BY MR. SWERLING

1 | airport?

2 | A. Yes.

3 | Q. So there's nothing to prevent you from
4 | being in communication with the Canadian
5 | authorities?

6 | A. I was in communication with them.

7 | Q. Okay. But they didn't tell you about
8 | this statement until March 29th of 2021, that's my
9 | point?

10 | A. Yes, that's when I received it.

11 | Q. Okay. And they never called you as the
12 | chief investigating officer whether there's a
13 | treaty or not, you're both law enforcement
14 | agencies, they never bothered to let you know that?

15 | A. I think he thought he had when --

16 | MR. SWERLING: Objection, now. Move to
17 | strike that.

18 | Q. You think is not a proper answer. I'm
19 | asking you a straight question. Did he call you as
20 | a law enforcement officer and tell you what kind of
21 | statement was made?

22 | A. Not on September 5th.

23 | MS. CREPPON: I'm sorry, I didn't get
24 | the answer.

25 | A. Not on September 5th.

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 MS. CREPPON: Thank you.

2 THE COURT: And as far as striking from
3 the record, I think somebody ought to let me rule.
4 I'm not real sure I know what the answer was y'all
5 just kept right on going.

6 MR. SWERLING: I'm sorry, Your Honor,
7 that's my fault. He was responding to something
8 that I had not asked, that's why I made that
9 motion. So it's fine. I think the answer has been
10 established at this point.

11 THE COURT: Okay. All right. Good.

12 MS. MAYES: The State calls Cody
13 Weyandt.

14 THE COURT: Is this going to be a short
15 witness?

16 MS. MAYES: We can approach on
17 scheduling, Your Honor.

18 THE COURT: Yes.

19 (WHEREUPON, there was a bench
20 conference)

21 THE COURT: Mr. Foreman, I read your
22 note and we will make it a shorter lunch hour. It
23 probably won't be a full hour. It's probably going
24 to be 45 minutes. Okay. But I do have your pizza
25 coming in. We're going to do another witness.

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 I'll get you back to the jury room by 1 so you're
2 not eating cold pizza.

3 THE COURT: Okay.

4 MR. FOREMAN: Appreciate it.

5 THE COURT: All right. Thank you. Go
6 ahead.

7 MS. MAYES: The State calls Cody
8 Weyandt.

9 CODY WEYANDT,
10 being first duly sworn, was examined and testified
11 as follows:

12 THE CLERK: Thank you. If you'll have
13 a seat over there, please. If you'll state your
14 name and spell your last for the record.

15 MR. WEYANDT: My name is Cody Weyandt.
16 Last name is W-E-Y-A-N-D-T.

17 DIRECT EXAMINATION

18 BY MS. MAYES:

19 Q. Good afternoon. First I want to ask you
20 a little bit about your appearance. I see you look
21 a little different today than some of the other law
22 enforcement officers we've seen?

23 A. Yes, ma'am.

24 Q. Why is that?

25 A. I am currently assigned as a narcotics

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 investigator for the Lexington County multiagency
2 narcotics enforcement.

3 Q. All right. And as a narc agent, do you
4 also work undercover?

5 A. I do.

6 Q. All right. I'm going to ask you to
7 pull that microphone up a little bit closer to you.

8 Detective Weyandt, in what role were
9 you with the Lexington County Sheriff's Department
10 back in the fall of 2019?

11 A. I was a crime scene investigator.

12 Q. All right. And at that point in time
13 were you experienced, were you in training, what
14 was your level of experience at that point?

15 A. In the fall of 2019 I was still in
16 training going through an FTO program at that time.

17 Q. All right. And who was the lead CSI
18 officer at that crime scene at 216 Carriage Hill
19 Court?

20 A. Thomas Smith.

21 Q. And were you there and present with Tom
22 Smith on September 3rd for the initial execution of
23 that search warrant and the search of the home?

24 A. Yes, ma'am.

25 Q. Were you also present on September 4th?

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 A. Yes, ma'am.

2 Q. And were you also present when you
3 returned back on September 8th for the recovery of
4 that last projectile?

5 A. Yes, ma'am.

6 Q. I'm going to ask you a little bit about
7 the home. Do you recall whether or not the lights
8 were on at the exterior of that home when you
9 arrived?

10 A. The lights were off when we arrived at
11 the house.

12 Q. All right. And can you tell us whether
13 at any point law enforcement cut a light on there
14 at that residence?

15 A. We did going into the later hours of
16 that day once it began to start getting dark.

17 Q. All right. Please describe why.

18 A. So while we were carrying items in and
19 out, different processing stuff and all of our
20 equipment, it was extremely dark right around that
21 property as well as the deputies who were
22 maintaining the security of the scene overnight
23 really needed to be able to see those entrances and
24 exits on the house, so the exterior lights were
25 turned on.

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 Q. Okay. And how did y'all go about
2 maintaining that scene through the course of that
3 eight day period -- I'm sorry, five day period?

4 A. The scene was held -- a deputy was
5 always on scene maintaining a crime scene log.
6 Anyone who came or go had to be on that log and at
7 no time was the scene left unattended.

8 Q. All right. Now, do you have
9 photographs -- do you actually take photographs
10 during the course of a crime scene investigation?

11 A. Yes, ma'am.

12 Q. And do you have with you documentation
13 as to when certain photographs are taken?

14 A. Yes, ma'am.

15 Q. How do you go about documenting that
16 information?

17 A. It's usually time stamped on the
18 different pictures.

19 Q. Can you tell us whether or not it's
20 time stamped with your initials?

21 A. Yes, ma'am, usually it is.

22 Q. I'm going to show you one item and this
23 is going to be State's 220. I'm also going to show
24 you 221. Look here at 220, do you recognize this
25 item?

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 A. I do.

2 Q. How so?

3 A. It is the data associated with the
4 photograph taken that has my initials on it.

5 Q. Okay. Is this how you preserve the
6 item once you take a photograph?

7 A. Yes, ma'am.

8 Q. And preserve it to your data base?

9 A. Yes, ma'am.

10 Q. All right. And can you tell us what is
11 depicted in the photograph?

12 A. It's a picture of the front of the
13 house of that residence.

14 Q. All right. And that date is September
15 3rd?

16 A. It is.

17 Q. And what time?

18 A. 1:17 p.m.

19 Q. All right. Now, can you tell us were
20 you taking photographs of the exterior at some
21 point in time upon your arrival?

22 A. I was.

23 Q. And did that include the time you were
24 waiting for the search warrant to be delivered?

25 A. Yes, ma'am.

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 Q. And looking here at 221, what is the
2 date reflected on this particular file?

3 A. Wednesday, September 4, 2019 at
4 9:44 a.m.

5 Q. All right. And do you also recognize
6 this as a photograph from the crime scene?

7 A. I do.

8 Q. Okay. And can you tell us whether it
9 also depicts the same location?

10 A. It does.

11 MS. MAYES: State's 220 and 221 for
12 evidence, Your Honor?

13 THE COURT: Any objection?

14 MR. SWERLING: No objection.

15 THE COURT: They're admitted.

16 (WHEREUPON, State's Exhibit Numbers 220
17 and 221 were entered)

18 Q. Looking here at 230, Detective Weyandt,
19 that depicts September 3, 2019 at 1:17 p.m.?

20 A. Yes, ma'am.

21 Q. That would be your initial arrival
22 there on the scene?

23 A. Yes, ma'am, or shortly thereafter.

24 Q. Any light on there at the front door
25 area?

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 A. No, ma'am.

2 Q. And did you observe any light on at the
3 exterior garage area?

4 A. No, ma'am.

5 Q. And next I'm going to show you what is
6 State's 221. Bearing the date of Wednesday,
7 September 4, 2019 at 9:44 a.m. Can you tell us
8 whether that is a fair and accurate representation
9 of the same location?

10 A. It is.

11 Q. And would this be after the light was
12 cut on?

13 A. Yes, ma'am.

14 Q. Were you present when that decision was
15 made to cut the light on?

16 A. Yes, ma'am.

17 Q. And is that routine when you are
18 searching a location after dark?

19 A. After dark, yes, ma'am. Once the
20 initial search of the scene has been done and has
21 been documented with photographs so that it is a
22 true representation of how we found the rooms, then
23 we will turn on lights inside of the residence to
24 be able to search better.

25 Q. All right. Now, this particular

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 | photograph is it taken outside the crime scene tape
2 | or inside the crime scene tape?

3 | A. I believe that is right near the crime
4 | scene tape.

5 | Q. Now, during the search of the
6 | residence, did you discover any type of calendar
7 | associated with persons residing therein?

8 | A. I did.

9 | Q. I'm going to show you what is State's
10 | 118 and 117 and ask you whether or not you
11 | discovered a calendar for August and September?

12 | A. Yes, ma'am. Yes, ma'am, that is the
13 | calendar from the kitchen of the residence.

14 | Q. And do you recall whether this calendar
15 | was in plain view?

16 | A. It was.

17 | Q. And did it appear based on your
18 | observations at the scene that the calendar was in
19 | use?

20 | A. Yes, ma'am.

21 | Q. And you photographed it to reflect your
22 | findings?

23 | A. Yes, ma'am.

24 | MS. MAYES: This would be State's 117
25 | and 118.

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 THE COURT: Any objection?

2 MR. SWERLING: Nothing additional, Your
3 Honor.

4 THE COURT: Okay. It's admitted.

5 (WHEREUPON, State's Exhibit Numbers 117
6 and 118 were entered)

7 Q. Looking here at 118, Detective Weyandt.

8 A. Yes, ma'am.

9 Q. I'm going to need you to pull that
10 microphone up closer to you.

11 A. Sorry about that.

12 Q. And just speak a little louder. You
13 indicated this was in what area of the kitchen?

14 A. On the counter.

15 Q. For the month of August, can you tell
16 us whether or not there was a marking for each of
17 those days?

18 A. There was.

19 Q. As well as personal notations?

20 A. Yes, ma'am.

21 Q. Regarding heartworm medications and
22 things of that nature?

23 A. Yes, ma'am.

24 Q. Now, I'm going to show you September
25 which is 117. And going back to August, what is

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 the last date in August for which there is a mark
2 off?

3 A. August 31st.

4 Q. What if any dates in September show a
5 mark off?

6 A. None of them.

7 Q. And yet do you see other indications
8 that the calendar is still in use for that month?

9 A. Yes, ma'am.

10 Q. Did there come a point in time during
11 your work with CSI that you were involved in -- you
12 were involved in the collection of any type of DNA
13 standard?

14 A. Yes, ma'am.

15 Q. Who did you collect a DNA standard
16 from?

17 A. Vincent Shivers.

18 Q. All right. I'm going to show you an
19 item and ask you whether or not you recognize it?

20 MS. MAYES: And with Your Honor's
21 permission if he may unseal the item?

22 THE COURT: What number is it?

23 Q. The number, please?

24 A. 196.

25 THE COURT: 196. He wants to unseal

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 it, is that okay?

2 MR. SWERLING: Nothing additional to
3 anything that's been raised before.

4 THE COURT: Okay.

5 (WHEREUPON, State's Exhibit Number 196
6 was entered)

7 Q. Will you unseal that item, Detective,
8 would it aid you in recognizing any signatures or
9 notations you may have made?

10 A. Yes, ma'am.

11 Q. Can you tell us whether or not this
12 item is currently sealed with evidence tape?

13 A. Yes, ma'am.

14 Q. As well as a heat package seal from the
15 State Law Enforcement Division?

16 A. Yes, ma'am.

17 Q. All right. Now, looking here at the
18 contents, do you recognize it?

19 A. I do.

20 Q. Does it bear your name?

21 A. It does.

22 Q. Does it bear the collection date?

23 A. It does.

24 Q. What is the date of this collection of
25 what is currently marked as State's 196?

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 A. 3/23/21.

2 Q. All right. March 23, 2021?

3 A. Yes, ma'am.

4 Q. And who were these swabs collected
5 from?

6 A. Vincent Shivers.

7 Q. The Defendant in this case?

8 A. Yes, ma'am.

9 Q. Now, how if at all did you go about
10 collecting these swabs, Detective?

11 A. Utilizing a swab that's included inside
12 of the kit is a cotton swab. It is a swab of the
13 inside of each side of the cheeks of the mouth it's
14 then collected and placed into a container that is
15 inside of that envelope, a bit of biographical
16 information is filled out on the front, it is then
17 sealed and submitted into evidence.

18 Q. And at this point in time in 2021, had
19 you had experience with the CSI division in
20 collecting buccal swab standards?

21 A. Yes, ma'am.

22 Q. And can you tell us whether or not you
23 would have worn gloves during the collection of
24 these buccal swabs?

25 A. I would have.

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 Q. Can you tell us whether or not anyone
2 else handled these items other than yourself?

3 A. No, ma'am.

4 Q. Where upon the body of Vincent Shivers
5 did you obtain these buccal swab standards?

6 A. The inside of his mouth.

7 Q. And what did you do immediately after
8 obtaining these buccal swabs?

9 A. They were then placed into a sealed
10 container inside the envelope.

11 Q. And we see here on the back of this
12 envelope, what?

13 A. Evidence seal tape.

14 Q. And who placed that evidence seal tape
15 there?

16 A. I did.

17 Q. And can you tell us whether or not it
18 also bears the date of your collection?

19 A. It does.

20 Q. And what is that date?

21 A. 3/23/21.

22 Q. And did it remain sealed throughout
23 that time?

24 A. Yes, ma'am.

25 Q. And throughout your submission to your

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 secure evidence vault?

2 A. Yes, ma'am.

3 Q. And is that ultimately to be submitted
4 to the State Law Enforcement Division for analysis?

5 A. Yes, ma'am.

6 MS. MAYES: Still for ID only at this
7 point, Your Honor.

8 THE COURT: Okay.

9 Q. Now, in addition to obtaining that
10 buccal swab from the Defendant, Vincent Shivers,
11 and the search of this residence at 216 Carriage
12 Hill Court, can you tell us what if any other
13 action you had in this case?

14 A. I conducted -- I executed a search
15 warrant on the vehicle that was brought back.

16 Q. Okay. I'm going to show you what is
17 State's 130 in evidence and 131. Can you tell us
18 whether or not you were present for the retrieval
19 of any firearms in this case?

20 A. I was.

21 Q. And I'm going to show you what is
22 State's 184. What firearms do you recall being
23 recovered in this case from this vehicle?

24 A. From the vehicle a Springfield 9mm
25 handgun and a Kimber .45 handgun.

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. Now, the 9mm was recovered
2 from where?

3 A. From the center console of the vehicle.

4 Q. Looking at State's 184, can you tell us
5 what we are observing?

6 A. Paperwork inside of the center console.

7 Q. And the 9mm was found where?

8 A. Under all that inside the firearms
9 case.

10 Q. It was still in its original firearms
11 case?

12 A. Yes, ma'am.

13 Q. Can you tell what we are observing
14 here?

15 A. That's the edge of the case that's
16 covered by the paperwork.

17 Q. Where was the Kimber .45 recovered?

18 A. It was located in a briefcase that was
19 in the backseat of the truck.

20 Q. Looking here at 187, do you recall
21 between yourself and Sergeant Burt which one of you
22 actually recovered that Kimber .45?

23 A. I did.

24 Q. And do you see in this photograph where
25 that firearm was located?

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 A. I do.

2 Q. If you could show us.

3 A. The briefcase is right here and it was
4 inside the lid of that inside of a pocket.

5 Q. After you recovered that item, can you
6 tell us what you did with it?

7 A. Once I recovered the handgun, I placed
8 it into a firearms box that was transported to the
9 crime lab where it was swabbed and unloaded.

10 Q. All right. And just to clarify, the
11 Kimber that was located -- the .45 that was located
12 in that particular briefcase, was it in a gun box
13 or was it on its -- loose?

14 A. It was loose inside of the briefcase.

15 Q. I'm going to show you what is marked as
16 State's 188 and ask if you recognize this item?

17 A. Yes, ma'am, I do.

18 Q. How so?

19 A. It's got my name and initials on it. I
20 filled out that bag.

21 Q. All right. What is this item?

22 A. It is ammunition that was taken from
23 the magazine of the Kimber.

24 Q. All right. And did you examine the
25 ammunition in the magazine to the Kimber .45?

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 A. I did.

2 Q. And can you tell us whether or not you
3 were at the crime scene?

4 A. I was.

5 Q. So I'm going to go back to that for a
6 moment. What role did you play in the actual
7 documentation of any casings there at the crime
8 scene?

9 A. I assisted Tom Smith in taking some
10 photographs of the scene and with writing notes.

11 Q. All right. And what do you recall
12 about that crime scene?

13 A. That the cartridge cases that were all
14 recovered beared the headstamp of HPR .45 auto.

15 Q. I'm going to take a look here State's
16 60?

17 A. Yes, ma'am.

18 Q. State's 61, State's 62, State's 72,
19 State's 63 being a spent casing?

20 A. Yes, ma'am.

21 Q. State's 64, spent casing; State's 65
22 spent casing; and State's 66, a spent casing?

23 A. Yes, ma'am.

24 Q. Do you recall whether or not all of
25 those casings from the crime scene were consistent

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 with one another?

2 A. They were.

3 Q. How so?

4 A. They were all the same caliber which
5 was .45 auto and they all beared the headstamp of
6 HPR which would be the manufacturer.

7 Q. Do you also recall whether there were
8 any unfired rounds -- unfired rounds also recovered
9 within that master bedroom?

10 A. Yes, ma'am.

11 Q. How so?

12 A. There were rounds recovered from the
13 master bedroom closet that I recall, there were
14 unloaded magazines.

15 Q. Okay. And do you remember any other
16 unfired rounds recovered?

17 A. I believe there was one also on the
18 dresser.

19 Q. I'm going to show you State's 74, ask
20 you whether or not you recognize that?

21 A. Yes, ma'am.

22 Q. And then you mentioned some additional
23 ammunition in the master bedroom closet?

24 A. Yes, ma'am.

25 Q. I'm going to show you what is State's

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 92?

2 A. Yes, ma'am.

3 Q. And State's 44. Do you recall what
4 type of ammunition was located within that area of
5 the master bedroom closet specifically those two
6 magazines?

7 A. Yes, ma'am. Inside of those two
8 magazines was additional .45 auto HPR branded
9 ammunition.

10 Q. And I'm going to show you what is
11 State's 89?

12 A. Yes, ma'am.

13 Q. Ask you whether you're familiar with
14 that item?

15 A. I am.

16 Q. Do you recall whether or not a gun was
17 located within this gun box in the master bedroom
18 closet?

19 A. There was not.

20 Q. And do you remember the make of that
21 firearm?

22 A. Springfield XD.

23 Q. Caliber?

24 A. .45.

25 Q. Do you recall whether the .45 caliber

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 magazines were also noted to be Springfield armory?

2 A. They were.

3 Q. Looking here at 58 depicting the
4 various locations that those expended cartridge
5 casings were recovered. Can you tell us whether or
6 not you discovered during your search of that
7 ammunition any similar casings to what was found at
8 the crime scene?

9 A. I did, in the truck.

10 Q. And how many did you find there?

11 A. I found -- in the magazine of the
12 Kimber there were five HPR branded .45 auto hollow
13 point rounds consistent with what were located at
14 the scene.

15 Q. And the headstamp you were able to
16 observe?

17 A. Yes, ma'am. HPR .45 auto.

18 Q. And also, can you tell us what the
19 outer casing appeared to be?

20 A. The cases are brass cases.

21 MS. MAYES: For evidence, Your Honor,
22 188.

23 THE COURT: Okay. Any objection?

24 MR. SWERLING: No objection.

25 THE COURT: It's admitted.

CODY WEYANDT - DIRECT EXAMINATION BY MS. MAYES

1 (WHEREUPON, State's Exhibit Number 58
2 was entered)

3 Q. Is this the headstamp you were
4 referring to?

5 A. I can't really see it on that.

6 Q. Is this where the headstamp is located?

7 A. It is.

8 Q. And State's 188?

9 A. Yes. That is the HPR .45 auto
10 headstamp.

11 MS. MAYES: Thank you. Nothing
12 further.

13 THE COURT: All right. Mr. Swerling,
14 do you want to cross after lunch?

15 MR. SWERLING: I think that would be
16 better.

17 THE COURT: All right. Let's do that.
18 All right. Ladies and gentlemen, it's 1 o'clock.
19 I'm going to let y'all go back to the jury room for
20 lunch, we're going to break for 45 minutes and I'll
21 have you back in, okay. No talking about the case.
22 Thank you.

23 (WHEREUPON, the jury exits the
24 courtroom at 1:01 p.m.)

25 THE COURT: Okay. I've -- I told the

CODY WEYANDT - CROSS-EXAMINATION BY MR. SWERLING

1 witness he's not allowed to speak to the State or
2 the Defense or anyone involved about this case
3 whatsoever, he's still under oath. We will be back
4 at quarter till 2.

5 MS. MAYES: And, Your Honor, he does
6 have belongings within our office.

7 THE COURT: He can go get his
8 belongings. Just can't talk about this case. All
9 right. We're at lunch.

10 (Lunch break)

11 THE COURT: Is the State ready?

12 MS. MAYES: We're ready.

13 THE COURT: All right. Let's bring
14 them in.

15 (WHEREUPON, the jury enters the
16 courtroom at 2:01 p.m.)

17 THE COURT: All right is the jury
18 ready?

19 THE FOREPERSON: We are.

20 THE COURT: Now, the hard part is going
21 to be staying awake. All right. The State can
22 call their next witness -- oh, cross, I'm sorry.

23 Let me remind, Detective, that you're
24 still under oath. Okay. Thank you.

25 CROSS-EXAMINATION

CODY WEYANDT - REDIRECT EXAMINATION BY MS. MAYES

1 BY MR. SWERLING:

2 Q. I just have a couple questions. This
3 is the Springfield .45 box; right? It's -- I
4 can't -- there's a tag on here somewhere. Is the
5 Springfield box; correct? That was found in the
6 house?

7 A. Let's see. Yes, sir.

8 Q. Okay. And the -- and I'm not going
9 to -- this is State's Exhibit Number 91. Okay.

10 A. Yes, sir.

11 Q. Those are the magazines for the
12 Springfield; correct?

13 A. Yes, sir.

14 Q. And I believe that on the bottom of the
15 magazines it's stamped Springfield according to one
16 of the other investigators?

17 A. Yes, sir.

18 Q. So the Springfield is not in the house,
19 but the two magazines that come with the
20 Springfield are in the house?

21 A. Yes, sir.

22 Q. How many magazines usually come when
23 you buy a pistol?

24 A. Generally two to three.

25 Q. Two to three. So you have one -- I

CODY WEYANDT - REDIRECT EXAMINATION BY MS. MAYES

1 open this box up, it looks like there's a space
2 here for one magazine; correct?

3 A. Yes, sir.

4 Q. And there's usually one in the pistol
5 empty?

6 A. Yes, sir.

7 Q. So if this came with two magazines, the
8 Springfield, this is the one that can't be
9 accounted, for this pistol; correct?

10 A. Yes, sir.

11 Q. Then both -- or two magazines are in
12 the closet?

13 A. Yes, sir.

14 Q. So they're not missing?

15 A. No, sir.

16 MR. SWERLING: I think that's all I
17 have.

18 THE COURT: Ms. Mayes?

19 MS. MAYES: Yes.

20 REDIRECT EXAMINATION

21 BY MS. MAYES:

22 Q. And, Detective Weyandt, I'm going to
23 ask you to open this box.

24 A. Yes, ma'am.

25 Q. Take a look at State's 11. All right.

CODY WEYANDT - RECROSS EXAMINATION BY MR. SWERLING

1 And can you tell us whether or not both of these
2 magazines and a firearm with a magazine could fit
3 in this box?

4 A. I believe it's possible, yes, ma'am.

5 Q. Okay. And you indicated I believe on
6 cross that some guns come with three magazines?

7 A. Yes, ma'am.

8 Q. And can you tell us whether there is a
9 serial number on this particular item?

10 A. There is.

11 Q. And the make and model of this item?

12 A. Yes, it's right there. It's a
13 Springfield XD .45 SP.

14 Q. And the serial number?

15 A. The serial number is US647148.

16 Q. Now, in addition to any ammunition or
17 magazines that may come with a firearm, can they be
18 purchased on the market as well?

19 A. Yes, ma'am.

20 MS. MAYES: Thank you. Nothing
21 further.

22 MR. SWERLING: I just have one
23 question.

24 RECROSS EXAMINATION

25 BY MR. SWERLING:

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. The box for the Springfield that I
2 showed you, would you look in that. Isn't it true
3 that there is no space there for a third magazine,
4 is there?

5 A. Not cut into the foam.

6 Q. Okay. There's a space for one magazine
7 and then there's a space for a pistol and a
8 magazine to be placed into the handle?

9 A. Generally you could stack two in the
10 spot for one.

11 Q. Pardon?

12 A. You could possibly put two into the
13 spot where there is for one, but, yes.

14 Q. It's made for one?

15 A. Generally, yes, sir.

16 Q. Okay.

17 MR. SWERLING: Thank you.

18 THE COURT: Okay. Anything else?

19 MR. SWERLING: I have nothing further,
20 Your Honor.

21 THE COURT: May I excuse the Detective?

22 MS. MCMENAMIN: Yes, Your Honor. The
23 State calls Rachel Nguyen.

24 RACHEL NGUYEN,
25 being first duly sworn, was examined and testified

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 as follows:

2 THE CLERK: If you'll have a seat and
3 state your name and spell your last, please, for
4 the record.

5 MS. NGUYEN: My name is Rachel Nguyen,
6 N-G-U-Y-E-N.

7 DIRECT EXAMINATION

8 BY MS. MCMENAMIN:

9 Q. Ms. Nguyen, can you tell us where your
10 are currently employed?

11 A. I'm currently employed at the South
12 Carolina Law Enforcement Division most commonly
13 known as SLED.

14 Q. And if you don't mind, if you'll move
15 the microphone just a little bit closer to you. I
16 can hear you, but I want to make sure everyone can
17 hear you.

18 A. Okay.

19 Q. All right. You work at SLED?

20 A. I do, the South Carolina Law
21 Enforcement Division.

22 Q. How long have you been working there?

23 A. I've been with SLED for seven and a
24 half years.

25 Q. And what is your current position?

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. My current position, I'm a forensic
2 scientist within the DNA casework department. At
3 the time I worked on this case, I was a forensic
4 serologist within the DNA casework department.

5 Q. Can you tell us a little bit about your
6 educational and background in serology?

7 A. So I have two Bachelor of Science
8 degrees from the University of New Haven, one in
9 biology and one forensic science. Upon being
10 employed within the DNA casework department I
11 underwent a yearlong training process under a court
12 qualified forensic serologist.

13 During that time, I was not only able
14 to observe the different evidence processing
15 techniques and different types of testing we do
16 there, I was also able to practice these various
17 techniques. At the end of my yearlong training
18 process, I then entered a competency phase which is
19 essentially testing my knowledge and abilities to
20 perform all these tasks independently.

21 During that competency phase, I take a
22 written exam, an oral exam, I have to perform
23 analysis on a fake case and then have I have a mock
24 court. And then once all those components are
25 successfully completed, I am then deemed able to

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 perform independent case work in the area of
2 forensic serology.

3 Q. And have you ever been qualified as an
4 expert in serology?

5 A. I have.

6 Q. How many times?

7 A. Six times.

8 MS. MCMENAMIN: Your Honor, the State
9 would offer the witness, Rachel Nguyen, as an
10 expert in the field of serology analysis.

11 MS. BARBIER: No objection, Your Honor.

12 THE COURT: Okay. And I'm going to
13 tell the jury that this witness is going to be an
14 expert. She can give her opinion in this case.
15 That does not mean you have to accept the opinion.
16 But it is evidence for you to use in any way you
17 see fit. Go ahead.

18 MS. MCMENAMIN: Thank you, Your Honor.

19 Q. Now, Ms. Nguyen, we've used the word
20 serology a few times now, can you explain what that
21 is?

22 A. Serology is essentially body fluid
23 identification. So at the DNA department at SLED,
24 we perform various tests to identify semen, saliva
25 and blood.

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Okay. And in this particular case you
2 said that you did some analysis on items; is that
3 correct?

4 A. That's correct.

5 Q. Would that be SLED lab number L1916580?

6 A. May I review my notes?

7 Q. Yes, please.

8 A. L1916580, yes.

9 Q. Okay. And what items were there that
10 you did analysis on?

11 A. So the first item that I performed
12 analysis on was SLED item 18 which is a white
13 undershirt. The second item I performed analysis
14 on is SLED item 32 which is a blue adult furry
15 onesie.

16 Q. Okay. Can you sort of take us step by
17 step or item by item. Let's look at the white
18 shirt. What types of analysis were you asked to do
19 on the white shirt item 18?

20 A. The submitting agency requested blood
21 testing as well as ownership testing. Ownership is
22 trying to find the potential primary wearer of an
23 item. So, you know, shirts or undershirts, bras,
24 that kind of thing.

25 Q. Okay. And can you tell us what

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 analysis you were asked to do on the blue onesie?

2 A. The blue onesie had a request for
3 blood.

4 Q. And the items that you did analysis on
5 were both of them sealed when they came to you?

6 A. They were both sealed.

7 Q. Were there signs of tampering with
8 these items when they came to you?

9 A. There was not.

10 Q. And can you walk us through or explain
11 to the jury the analysis that you did, the
12 process -- what you processed and analyzed in
13 regards to the white shirt?

14 A. Okay. So the white shirt had both the
15 blood request and the ownership request. So first
16 I would visually examine the white shirt, I'm going
17 to look for any areas of potential blood. Then we
18 perform a chemical test to identify the possible
19 presence of blood.

20 This white undershirt did have an area
21 that screened positive. Which means presumptive
22 testing for blood was positive and I took a cutting
23 of this from the white shirt. The cutting was
24 located from the front center exterior of the white
25 shirt. Then I performed the ownership processing

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | that I previously mentioned. So I take a sterile
2 | scraper. I kind of scrape up the underarms in the
3 | color to try and loosen any potential skin cells
4 | and then I will swab that area to collect them.

5 | I also looked for hair. There was hair
6 | found on the shirt.

7 | Q. Okay. What about the blue onesie, what
8 | did you do on that?

9 | A. So the blue onesie only had blood
10 | testing requested. I did find an area that
11 | presumptively tested positive for blood. So I took
12 | a cutting from the exterior left sleeve near cuff
13 | of blue adult furry onesie.

14 | Q. And what did you say the results were
15 | for the white shirt?

16 | A. So for the white shirt, the -- our SLED
17 | item 18.1 cutting from front center exterior of
18 | white undershirt, it had the results of presumptive
19 | testing for blood was positive. This item was
20 | forwarded to the DNA section. The swab from
21 | scraping underarms and collar of white undershirt,
22 | this item was forwarded to the DNA section. And
23 | then any possible hair collected from the white
24 | undershirt, one hair was forwarded to the DNA
25 | section.

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. And what were the results for the blue
2 onesie?

3 A. So for the blue onesie, the cutting
4 from exterior left sleeve near cuff of blue adult
5 furry onesie, this was presumptive testing for
6 blood was positive and this item was also forwarded
7 to the DNA section for further analysis.

8 Q. So after these cuttings and things
9 you've collected from the shirt, after they test
10 presumptively positive for blood, what do you do
11 with them?

12 A. So after I remove these cuttings which
13 I'm cutting them out of the parent item, I put them
14 in a small envelope and the envelope with the
15 cuttings or the swabs or the hair, that is what is
16 being forwarded to the DNA section for further
17 analysis. The larger items which is the furry
18 onesie and white undershirt, that will be sent back
19 to our evidence control department to be returned
20 to the submitting agency.

21 If I can add to that. The cuttings
22 that I removed off of these clothing items, I also
23 prepare for a DNA analysis. So essentially that is
24 I'm taking a smaller cutting from the cuttings I've
25 already made. I'm also cutting a portion of the

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 swab and then I'm going to cut the root end of the
2 hair. The reason I'm cutting the root end is
3 because that's where you will find what we call
4 root material skin cells and that is where the DNA
5 will be present if there is any present. And that
6 would be forwarded to the DNA section.

7 Q. Okay. So we take big things, make them
8 into smaller and smaller things?

9 A. Essentially.

10 Q. Okay. And then from there, do you put
11 these in sealed containers?

12 A. Yes. So any cuttings or swabs or hair
13 collection as I mentioned when they are put in the
14 smaller envelopes, they will be grouped together in
15 a larger plastic pouch. We call it a heat seal
16 pouch because it is tamper evident and then we seal
17 it with heat.

18 MS. MCMENAMIN: Permission to approach
19 the witness, Your Honor?

20 THE COURT: Granted.

21 Q. Okay. Ms. Nguyen, I'm handing you what
22 has been marked somewhere on here -- I'm looking
23 for our evidence number for the white shirt.

24 THE COURT: I think it should be number
25 13, I think.

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 MS. MCMENAMIN: I believe it's 170,
2 Your Honor.

3 THE COURT: 170. Let me look and make
4 sure that I got that right. Okay. It is, white
5 undershirt.

6 MS. MCMENAMIN: Is 170?

7 THE COURT: 170.

8 MS. MCMENAMIN: Okay.

9 Q. So you recall receiving two items;
10 correct?

11 A. That's correct.

12 Q. A white undershirt and a blue onesie.
13 I'm handing you State's 170, can you identify that
14 and tell us how you can identify it?

15 A. So State's 170 is for SLED lab number
16 L1916580 is our item 18 which is the white
17 undershirt. I can identify this because on the
18 exterior packaging I have written the unique case
19 number, the item number, my initials and the date
20 that I opened this item.

21 Q. And when this came to you at SLED, how
22 was it packaged?

23 A. It was sealed. And I'm assuming it was
24 perhaps in a box or a pouch.

25 Q. But it came to you sealed?

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. Yes.

2 Q. And if you look at the item inside of
3 this bag that's marked as State's Exhibit, do you
4 recognize it?

5 A. So inside is the sterile scraper that I
6 mentioned before that I used for the ownership
7 processing. The white undershirt will also have
8 the unique case number, item number and my
9 initials. And then I have identified all the areas
10 that I've processed it on the shirt.

11 Q. Okay. So the holes there, those were
12 made by you. Is that one of your cuttings?

13 A. Yes. So this hole right here, I have
14 written that it was positive for presumptive
15 testing for blood and then I wrote 18.1 which is
16 our unique sub item number for my cutting.

17 Q. Thank you, Ms. Nguyen. I'm handing you
18 a box, State's Exhibit 180. Can you identify this?

19 A. Yes. So this also has the unique SLED
20 case number, item number on the front and our yell
21 ow bar codes that we use at SLED and there are
22 seals with our SLED evidence tape that have my
23 initials and date.

24 Q. Okay. Can you tell us where this item
25 was collected or by whom?

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 A. So this box looks like it was submitted
2 by the Lexington County Sheriff's Department. It
3 has blue adult furry onesie from master bedroom
4 closet and then it has an address, if you want me
5 to read it?

6 Q. Sure.

7 A. 216 Carriage Hill Court Lexington,
8 Connecticut.

9 Q. Lexington?

10 A. I mean, South Carolina. I am sorry.

11 Q. You're good. So when this item came to
12 you, was it in a sealed container?

13 A. Yes, it was sealed.

14 Q. Was it tampered with in any way?

15 A. It did not appear to be tampered with
16 in any way.

17 Q. Okay.

18 MS. MCMENAMIN: One moment. Beg the
19 Court's indulgence.

20 Q. Could you open the box that that's
21 currently in?

22 A. Yes.

23 MS. MCMENAMIN: This is State's 180
24 already in evidence, Your Honor.

25 Q. When you retrieve the item inside, can

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | you tell us whether or not you recognize it?

2 | A. Yes, I recognize this item. It has the
3 | unique case number, the unique item number, my
4 | initials and the date I opened this item.

5 | Q. Okay. If you could show us the items
6 | inside that bag?

7 | A. And there appears to be another layer
8 | of packaging which I also labeled the same way.

9 | Q. Okay.

10 | A. So this is just white processing paper
11 | that we process items of evidence in all the time
12 | and then we wrap it in when we're done processing.
13 | So this also has the unique case number, the unique
14 | item number, my initials and the date that I
15 | processed this.

16 | Q. Okay. If you'll open it further. And
17 | this came to you untampered with, sealed?

18 | A. Yes.

19 | Q. Do you recognize this item before you
20 | hold it up?

21 | A. I do.

22 | Q. What is it?

23 | A. So first, it's the adult blue furry
24 | onesie. I would of -- inside the zipper, I have
25 | labeled the case number, the item number and my

RACHEL NGUYEN - DIRECT EXAMINATION BY MS. MCMENAMIN

1 | initials.

2 | Q. We see lots of markings on here, can
3 | you tell us what those are?

4 | A. So the markings are areas that I have
5 | identified that may possibly need testing. If
6 | they're just circles that means they were untested.
7 | If they have words then that means they were tested
8 | and it has the results.

9 | So the sleeve that I mentioned
10 | before --

11 | Q. That would be the left sleeve?

12 | A. Yes, the left sleeve. It's kind of
13 | hard to read, but I can identify that it says
14 | positive bean, bean is shorthand for our
15 | presumptive blood testing. And then has the 32.1
16 | which would be the sub item number that I have
17 | assigned for this cutting. And you can see the
18 | hole where I cut it out.

19 | Q. Okay. Thank you. So you take the
20 | cuttings you -- they test presumptively positive
21 | for blood and then they're submitted to DNA?

22 | A. Yes, that's correct.

23 | Q. And you said they're put in their own
24 | individual packaging?

25 | A. That's correct.

RACHEL NGUYEN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Ms. Nguyen, I'm now handing you what's
2 marked as State's Exhibit 197 for identification,
3 do you recognize this?

4 A. So State's Exhibit 197 I do recognize.
5 It looks like it is a heat sealed pouch that I
6 created to contain the cutting, the swab and the
7 hair that were collected off of the white
8 undershirt.

9 Q. Okay.

10 A. So same thing. This has the unique
11 case number, our container number and then my
12 initials and date.

13 Q. So these are the items from the white
14 undershirt?

15 A. That's correct.

16 Q. Okay.

17 MS. MCMENAMIN: State offers 197 into
18 evidence at this time.

19 THE COURT: Any objection?

20 MS. BARBIER: No objection.

21 THE COURT: It's in.

22 (WHEREUPON, State's Exhibit Number 197
23 was entered)

24 Q. And the cutting for the blue onesie,
25 was it forwarded to DNA?

RACHEL NGUYEN - CROSS-EXAMINATION BY MS. BARBIER

1 A. That was.

2 Q. And forwarded to Sam Stewart?

3 A. So the cutting from the adult onesie
4 was essentially forwarded to Sam Stewart. I put it
5 in a -- hold on one moment. When I was done with
6 this cutting I transferred it to internal location
7 within the DNA department and then Sam retrieved it
8 from that location.

9 Q. Okay. Thank you, Ms. Nguyen.

10 MS. MCMENAMIN: I have no further
11 questions for this witness. But I am going to help
12 get this out of her way if that's all right, Your
13 Honor.

14 THE COURT: That's fine.

15 MS. BARBIER: I just have a few
16 questions.

17 CROSS-EXAMINATION

18 BY MS. BARBIER:

19 Q. Good afternoon, Ms. Nguyen, I'm Debbie
20 Barbier, I represent Mr. Shivers.

21 A. Good afternoon.

22 Q. So, Ms. Nguyen, you were asked to
23 examine a white undershirt as one of the items for
24 the presence of blood; is that correct?

25 A. That's correct.

RACHEL NGUYEN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. And you were asked to do two
2 things to determine whether there was blood in the
3 stain and also to determine who was the primary
4 wearer of the shirt?

5 A. That is correct.

6 Q. Okay. I have seen the report that I
7 believe that you issued and I did not see any
8 conclusion as to who the primary wearer of the
9 shirt was?

10 A. So I don't myself identify the primary
11 wearer. I just do potential collection for any
12 possible DNA on the item and then that sample is
13 forwarded to the DNA section for them to possibly
14 generate a DNA profile.

15 Q. All right. So when you identify that
16 an item contains blood, are you able to make any
17 further analysis as to what type of blood that is?

18 A. So it's presumptively positive for
19 blood or testing because it's reacting with a
20 certain element of blood. So what I think you're
21 asking is it's not identifying if it's human or
22 dog, it's just saying that this stain is
23 potentially blood.

24 Q. So it is not and it's potentially
25 blood; correct?

RACHEL NGUYEN - CROSS-EXAMINATION BY MS. BARBIER

1 A. Yeah, because it's presumptively
2 positive for blood.

3 Q. Presumptively positive, so that's not
4 positive it's just presumptively positive; correct?

5 A. That is correct.

6 Q. There's a distinction there, isn't
7 there?

8 A. Yes. So like all tests, there could be
9 potentially false positives.

10 Q. Okay. And you don't know whether it's
11 human blood or animal blood also; is that correct?

12 A. That is correct.

13 Q. Okay. And you did not make any
14 findings as to the blood type, for instance,
15 whether it was A positive, O positive?

16 A. No, I don't do any blood typing.

17 Q. Okay. Does the technology exist to do
18 that?

19 A. We do not currently use that type of
20 technology in serology within our DNA casework
21 department, so I assume that technology still
22 exists, but we don't process blood that way.

23 Q. SLED does not process --

24 A. That is correct.

25 Q. But that technology exists; correct?

RACHEL NGUYEN - CROSS-EXAMINATION BY MS. BARBIER

1 A. To my knowledge blood typing does still
2 exist.

3 Q. So it is possible to have determined
4 whether or not that was human blood or animal
5 blood; correct?

6 A. I could not have -- oh, I'm sorry.

7 Q. I'm just asking is it possible?

8 A. It is possible. We do have a
9 confirmation test at SLED that does identify human
10 blood with the exception of -- the test does also
11 indicate ferret blood.

12 Q. And it is also possible not at SLED,
13 but elsewhere to determine what blood type that
14 blood is; correct?

15 A. That is correct.

16 Q. But that was not done in this case;
17 correct?

18 A. That was not done because we don't have
19 those capabilities.

20 Q. Okay. And it is also the technology
21 exists to make even further findings about this
22 blood. For instance, whether or not this contained
23 any blood thinners; correct?

24 A. I am not familiar with any possible
25 testing that detects blood thinners.

RACHEL NGUYEN - CROSS-EXAMINATION BY MS. BARBIER

1 Q. Okay. How about whether or not a low
2 platelet count could be detected in blood analysis,
3 are you aware of whether that technology exists?

4 A. I do not know anymore extensive blood
5 testing that would do blood platelets, I believe
6 you said?

7 Q. Correct. A lot platelet count.

8 A. Yeah, I am not familiar with that type
9 of testing.

10 Q. Okay. And so SLED is planning to build
11 a new laboratory; is that correct?

12 A. We are.

13 Q. But they don't currently have the
14 latest and greatest technology at this time; is
15 that right?

16 A. So the target of doing presumptive
17 blood testing is because blood is rich in DNA, so
18 that is why we kind of we just presumptively test
19 for blood and then it is up for the DNA analyst to
20 decide whether there is potentially a DNA profile
21 from a human.

22 Q. Well, I appreciate that information.
23 But my question was, does SLED have the most
24 advanced technology in doing blood analysis that
25 exists?

RACHEL NGUYEN - CROSS-EXAMINATION BY MS. BARBIER

1 A. We use the most common widely like
2 accepted testing.

3 Q. Okay. You were also asked to look to
4 whether or not hair existed on any of these items;
5 is that correct?

6 A. So a portion of the ownership
7 processing is not only just swabbing high areas of
8 friction, but it is also to collect any possible
9 hair that comes off the item when I'm scraping the
10 item.

11 Q. And is it there any technologically
12 advanced about what you do to find hair? I mean,
13 how do you find hair?

14 A. So I look in the area where I scraped,
15 if there's anything that visibly looks like hair, I
16 collect it on a Post-it note. Then I will bring it
17 to a serial microscope which will help me visualize
18 as I previously mentioned if these hairs have root
19 material. The ones that do have root material, I
20 will identify and then forward to the DNA section
21 for further analysis.

22 Q. So you didn't do any further analysis
23 on the scrapings that you took; is that right?

24 A. No, I just collected the swab from the
25 area I scraped and then cut that swab for DNA

RACHEL NGUYEN - CROSS-EXAMINATION BY MS. BARBIER

1 analysis.

2 Q. Okay. And you didn't do any further
3 analysis on the hair either; is that right?

4 A. No, I did not do any further analysis
5 on the hair. I just forwarded it to the DNA
6 section for further analysis.

7 Q. Okay. Now, can you from your
8 determination of whether or not blood exists on an
9 item, can you determine when blood was placed on
10 that item, the date on which it was placed or
11 anything to that affect?

12 A. I cannot identify when a blood stain
13 has been placed on an item.

14 Q. So the onesie that you showed the jury,
15 the stain that's on that item could have been on
16 there for years; correct?

17 A. There is a wide possibility of when
18 that was deposited on the adult onesie.

19 Q. Okay. And you also are not determining
20 whose blood are on these items; correct?

21 A. I am only presumptively testing and
22 then forwarding them to the DNA section for further
23 analysis.

24 Q. Now, let me ask you this. Other than
25 the white t-shirt and the onesie and these

RACHEL NGUYEN - CROSS-EXAMINATION BY MS. BARBIER

1 scrapings that you took, did they submit any other
2 items to you for testing?

3 A. To me personally for processing? No.
4 These are the only two I processed within this
5 case. Since the adult onesie is item 32, I imagine
6 there are 32 prior items at least ahead of it.

7 Q. Were those items submitted to the DNA
8 section?

9 A. So the documentation I have is just
10 it's not all the items that were submitted in the
11 case, but a majority of them and, no, not
12 everything was submitted to the DNA section.

13 Q. Okay. So is there a backlog of cases
14 at SLED in the lab?

15 A. To my knowledge, yes, there are.

16 Q. Does it sometimes take years for DNA
17 analysis to be done?

18 A. On one particular case from the time it
19 comes in the door, that's possible.

20 Q. Okay. And are investigators encouraged
21 to limit the number of items they submit to the lab
22 for analysis --

23 MS. MCMENAMIN: Objection, Your Honor.
24 That calls for speculation and opinion.

25 THE COURT: It does.

RACHEL NGUYEN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 MS. BARBIER: I'm not asking her to
2 speculate, Your Honor. I'm asking her whether or
3 not that is a fact whether investigators are
4 encouraged to limit the submissions based on the
5 backlog.

6 THE COURT: Whether she knows if her
7 department does that.

8 MS. BARBIER: Whether she knows if that
9 occurs at SLED in general.

10 THE COURT: Go ahead.

11 A. So in general, I can't speak for all
12 the departments within the forensic laboratory. I
13 wouldn't necessarily say that we encourage limited
14 selection. Our submission guidelines are that you
15 choose the best five to be analyzed first and then
16 after those five are analyzed, you can request
17 another five and so forth.

18 Q. But the policy as I understand it and
19 the policy is on the internet, the SLED laboratory
20 manual, is that there's a limit of five items to
21 submit and you may not submit further items until
22 that analysis is done, am I correct on that?

23 A. It is not a policy it's just general
24 guidelines. So quite often people do submit more
25 than five.

RACHEL NGUYEN - REDIRECT EXAMINATION BY MS. MCMENAMIN

1 Q. Okay. But in this case there were two
2 submissions; is that right, to you?

3 A. I received two items.

4 Q. Okay. And do you know why they chose
5 to submit the blue onesie and white t-shirt to you
6 other than -- I mean, why those two items were
7 chosen over other items?

8 A. Oh, I don't know why they chose -- I'm
9 not sure what all they collected. I just can go
10 off of what has been submitted to the SLED
11 laboratory and then what is requested of me to
12 process.

13 Q. Okay. Thank you.

14 MS. BARBIER: Beg the Court's
15 indulgence.

16 THE COURT: Okay.

17 MS. BARBIER: I don't have any other
18 questions. Thank you.

19 THE COURT: Any --

20 MS. MCMENAMIN: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. MCMENAMIN:

23 Q. Ms. Nguyen, two items were submitted to
24 you; correct?

25 A. That is correct.

SAMUEL STEWART - DIRECT EXAMINATION BY MS. MAYES

1 Q. And you did testing on both items?

2 A. I did do testing on both items.

3 Q. And what was the result of that
4 testing?

5 A. So the white undershirt had a cutting
6 from the front center exterior that was presumptive
7 testing for blood was positive. That item was
8 forwarded to the DNA section. There was a swab
9 from scraping the underarms and collar of the white
10 undershirt, that item was forwarded to the DNA
11 section. And then a hair from the white undershirt
12 was forwarded to the DNA section.

13 The cutting from exterior left sleeve
14 near cuff of blue adult furry onesie was
15 presumptive testing for blood was positive and that
16 item was forwarded to the DNA section.

17 Q. And when items are forwarded to the DNA
18 section, they are sealed; is that correct?

19 A. Yes. I will seal them after I've
20 collected them and prepped them for analysis.

21 Q. In a manner that keeps them from being
22 tampered with?

23 A. Yes. They're in tamper evident
24 pouches.

25 Q. And are they stored in a safe secure

SAMUEL STEWART - DIRECT EXAMINATION BY MS. MAYES

1 area while awaiting to be further tested by the DNA
2 analyst?

3 A. They are secured in a safe secure area.

4 MS. MCMENAMIN: Nothing further for
5 this witness. Thank you, Your Honor.

6 THE COURT: Okay. May I excuse this
7 witness?

8 MS. BARBIER: Yes, you may, Your Honor.
9 Thank you.

10 THE COURT: Thank you so much for
11 coming.

12 MS. MAYES: The State calls Samuel
13 Stewart.

14 SAMUEL STEWART,
15 being first duly sworn, was examined and testified
16 as follows:

17 THE CLERK: If you'll have a seat over
18 there, please. State your name and spell your
19 last, please, for the record.

20 MR. STEWART: Samuel Allen Stewart,
21 S-T-E-W-A-R-T.

22 MS. MAYES: We need a few moments, Your
23 Honor, to locate some items of evidence.

24 THE COURT: Okay.

25 MR. SWERLING: Judge, while they're

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1 | doing that, may we approach?

2 | THE COURT: Sure.

3 | (WHEREUPON, there was a bench
4 | conference)

5 | MS. MAYES: I think we're ready, Your
6 | Honor. Obviously a lot of exhibits before us.

7 | THE COURT: Yes. Go ahead.

8 | DIRECT EXAMINATION

9 | BY MS. MAYES:

10 | Q. Can you start by telling us your full
11 | name and occupation?

12 | A. Samuel Allen Stewart. I work for the
13 | South Carolina Law Enforcement Division commonly
14 | known as SLED.

15 | Q. All right. And, Mr. Stewart -- Agent
16 | Stewart, if you could just pull the microphone a
17 | little bit closer to you and speak a little bit
18 | louder.

19 | A. I can do that.

20 | Q. How long have you been with the State
21 | Law Enforcement Division?

22 | A. Ten years.

23 | Q. And where specifically within the crime
24 | lab do you work?

25 | A. DNA analyst assigned to the DNA

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1 casework department.

2 Q. All right. And what type of work do
3 you do within the DNA department?

4 A. It's my responsibility to process any
5 items of evidence and known standards for DNA. My
6 purpose is to try to determine whether the DNA
7 profile from those known standards can be included
8 or exclude as a possible contributor to the DNA
9 profile from the evidence.

10 Q. What type of educational background and
11 training do you have that led you to become a
12 forensic DNA analyst at SLED?

13 A. I received my Bachelor of Science in
14 Biology from Francis Marion University. Then I
15 received inhouse training for over a year and a
16 half from other court qualified analysts. We had
17 to complete hundreds of practice, training samples,
18 a written exam, an oral exam, competency test and a
19 mock trial before I was deemed qualified as a DNA
20 analyst.

21 Q. All right. And can you tell us if you
22 have testified previously as an expert in the field
23 of DNA science?

24 A. Yes, I have.

25 Q. Does that include the statistical

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1 findings that corresponded with your analysis?

2 A. Yes, they do.

3 Q. And how many such times have you been
4 deemed and qualified as an expert in the courts in
5 this state?

6 A. Forty times.

7 Q. Forty times?

8 A. That is correct.

9 MS. MAYES: Your Honor, at this time,
10 the State offers agent Sam Stewart as an expert in
11 the field of DNA.

12 MS. BARBIER: No objection?

13 THE COURT: All right. I'm going to
14 tell the jury, he's -- this witness is going to be
15 qualified in the area of DNA and he's going to give
16 his opinion testimony in that area. But it's
17 evidence -- his testimony is evidence for you to
18 use in any way you see fit. Okay. Go ahead.

19 Q. What is meant, Agent Stewart, by the
20 term deoxyribonucleic acid?

21 A. That is the long form of DNA. DNA --
22 as she said, deoxyribonucleic acid is genetic
23 material that's found in every person and is
24 responsible for certain traits such our eye or hair
25 color.

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1 As a DNA analyst, I try to get those
2 DNA various chromosomes that are found within your
3 body. And in those chromosomes, we target certain
4 locations, those are called STRs. And that stands
5 for short standard repeats. And we use 21 of those
6 STR locations that are found in the various
7 chromosome to develop what is known as a DNA
8 profile. When then I can use to identify one
9 person from another person excluding identical
10 twins.

11 Q. All right. Now with that said, can you
12 tell us what it takes there in your DNA lab in
13 order to develop DNA profiles for comparison
14 analysis?

15 A. We have a four step process. First
16 step is extraction. That's when we're taking the
17 DNA off of the item, it could be most likely a
18 cutting or a swab. You have a buffer and a
19 different reagents that we use to extract or pull
20 that DNA off that item.

21 Once we do that then the next step we
22 do is quantify it. This step is important because
23 we need to determine how much DNA we have. Too
24 little or not enough DNA or too much DNA will not
25 give us a viable profile.

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1 Once we found out exactly the range
2 that we need from the quantification step, we move
3 on to amplification. Which we're making many, many
4 copies of that DNA and this is essentially again
5 trying to make sure that we can get a viable DNA
6 profile for interpretation purposes.

7 Once we've made the many, many copies,
8 then the next step is separation. This is when
9 we're actually separating out the DNA into those
10 different STR locations I spoke of to develop the
11 DNA profile that we use for comparison purposes.

12 Q. All right. Now, what type of human
13 bodily fluids contain DNA?

14 A. We can get DNA from blood, semen,
15 saliva, even touch cells that may come off of your
16 body and hair material as well as long as there's
17 viable root material.

18 Q. All right. Now, you mentioned blood.
19 You are able to develop a DNA profile from blood?

20 A. That is correct.

21 Q. And just to clarify, what type of blood
22 does the State Law Enforcement Division analyze; is
23 that human blood?

24 A. Yes, it is.

25 Q. Do you analyze animal blood?

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1 A. We do not.

2 Q. So can you tell us what then you need
3 in order to compare a DNA profile that you've
4 developed from a crime scene, for example, to a
5 standard to determine who it may belong to?

6 A. We need that known standard. That's
7 what we're comparing it to from those known
8 individuals that may be involved in that
9 investigation. That's where we're making the
10 comparisons to that DNA profile on the evidence.

11 Q. All right. And so when you say known
12 standard, would that include a buccal swab, for
13 example?

14 A. That is correct. Buccal swab or blood
15 from an individual we can use as a known standard.

16 Q. Can you tell us whether or not you
17 received a buccal swab or mouth swab from the
18 Defendant in this case being Vincent Shivers?

19 A. Yes, I did.

20 Q. I'm going to show you what has been
21 marked at this time as -- do you recognize this
22 item before you?

23 A. Yes, I do. It has the unique SLED
24 number and item number that's assigned when it
25 comes into our custody as well as it has my

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1 | initials and date on the heat sealed pouch.

2 | Q. All right. And what's the date that
3 | you received this item? According to the pouch.

4 | A. I received this item to my custody on
5 | March 31, 2021.

6 | Q. And can you tell us whether or not this
7 | is the buccal swab or known standard as you
8 | mentioned it for the Defendant, Vincent Shivers?

9 | A. Yes, it is.

10 | Q. Now, can you tell us whether or not it
11 | arrived to you sealed?

12 | A. It did.

13 | Q. And how do you go about making sure
14 | that any evidence that arrives to you has been
15 | properly sealed?

16 | A. I check the heat sealed pouch on it
17 | making sure that there are no loose ends or any
18 | kind of air pockets that the seal did not
19 | completely seal on that heat sealed pouch.

20 | Q. All right. And I'm going to show you
21 | what is 198 and ask you whether or not this is the
22 | heat sealed pouch for this item?

23 | A. Yes, it is.

24 | Q. All right. And based upon your
25 | observations, did this item arrive to you

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1 | untampered with?

2 | A. Yes, it did.

3 | Q. Who is the person who actually unsealed
4 | this item being State's 198, the buccal swab known
5 | standard of the Defendant in this case Vincent
6 | Shivers?

7 | A. I was the individual that unsealed the
8 | heat sealed pouch.

9 | MS. MAYES: Your Honor, at this time,
10 | 198 for evidence.

11 | THE COURT: Okay.

12 | MS. BARBIER: No objection.

13 | THE COURT: Wait a minute. Can the
14 | lawyers approach just one second about this?

15 | (WHEREUPON, there was a bench
16 | conference)

17 | Q. Once you received the known standard of
18 | the Defendant, Vincent Shivers, were you able to
19 | develop a DNA profile from that item?

20 | A. Yes, I did.

21 | Q. And then you use that profile for
22 | purposes of cross comparison?

23 | A. That is correct.

24 | Q. Now, I'm going to ask if you also
25 | received a known standard or blood standard from

SAMUEL STEWART - DIRECT EXAMINATION BY MS. MAYES

1 the victim, Roselynn Cedenno, from autopsy?

2 A. Yes, I did.

3 Q. I'm going to show you 194 and ask you
4 whether or not you recognize that item?

5 A. Yes, I do.

6 Q. How so?

7 A. It has the unique SLED number and item
8 number that is assigned when it comes into our
9 custody as well as it has my initials and date on
10 the heat sealed pouch.

11 Q. And did that also -- who is the person
12 who unsealed this item of evidence?

13 A. I was the individual that did it.

14 Q. And did it arrive to you previously
15 sealed?

16 A. Yes, it did.

17 Q. With no signs of tampering?

18 A. No signs of tampering.

19 MS. MAYES: All right. This would be
20 194 for evidence, Your Honor.

21 THE COURT: Okay.

22 MS. BARBIER: No objection, Your Honor.

23 THE COURT: And no objection it's
24 admitted.

25 (WHEREUPON, State's Exhibit Number 194

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1 was entered)

2 Q. Now, I'm going to ask you whether or
3 not you also received fingernail clippings from the
4 victim in this case Roselynn Cedenó collected at
5 autopsy?

6 A. Yes, I did.

7 Q. I'm going to show you what is State's
8 191 and ask you whether or not you recognize this
9 item?

10 A. Yes, I do.

11 Q. How so?

12 A. It has the SLED unique number, item
13 number and it also has my initials on it
14 identifying these as our items 3 and 4.

15 Q. And who was the person who unsealed
16 this item of evidence?

17 A. I was.

18 Q. Can you tell us what condition it
19 arrived to you in?

20 A. The evidence was not tampered with when
21 it came to my custody.

22 Q. Seals were intact?

23 A. That is correct.

24 MS. MAYES: This would be 191 for
25 evidence, Your Honor.

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1 THE COURT: Any objection?

2 MS. BARBIER: No objection.

3 THE COURT: It's admitted.

4 (WHEREUPON, State's Exhibit Number 191
5 was entered)

6 Q. I'm going to also show you 197, this
7 being -- you take a look at this and tell us
8 whether or not you recognize this item?

9 A. Yes, I do.

10 Q. How so?

11 A. Once again, it has the unique SLED
12 number and item number that's assigned when it
13 comes into our custody. These are the item numbers
14 18.1, 18.2 and 18.3.

15 Q. All right. And can you tell us the
16 condition in which it arrived?

17 A. They came in sealed, not to be tampered
18 with when they came to my custody.

19 Q. All right. And who unsealed them after
20 arrival from Rachel Nguyen, the serologist?

21 A. I unsealed them.

22 MS. MAYES: This would be 197 for
23 evidence, Your Honor.

24 THE COURT: Any objection?

25 MS. BARBIER: No objection, Your Honor.

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1 THE COURT: It's admitted.

2 (WHEREUPON, State's Exhibit Number 197
3 was entered)

4 Q. I'm going to also show you what is 180
5 and ask you whether or not you also performed
6 analysis on a cutting from that item?

7 A. Yes, I did. It was marked as our item
8 number 32.1, this being the parent item 32.

9 Q. All right. And who made that cutting?

10 A. Forensic Scientist Rachel Nguyen.

11 Q. All right. And can you tell us whether
12 or not that cutting also arrived to you and in what
13 condition?

14 A. It arrived to be me untampered with and
15 sealed when I took it into my custody.

16 Q. And who unsealed the cutting from the
17 blue onesie?

18 A. I did.

19 Q. Can you tell us on whether or not it
20 arrived to you -- what condition it arrived to you
21 in?

22 A. It was not tampered with and the heat
23 sealed pouch was intact when it came into my
24 custody.

25 Q. All right. Now, given all of these

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1 items for analysis, were you able to develop a DNA
2 profile from any of them?

3 A. Yes, I was able to develop a DNA
4 profile from some of these items, that's correct.

5 Q. I'm going to start with the door latch
6 and I believe that's also an item that you
7 processed. Should be there with you as well.

8 A. Yes, it's our SLED number item 30.

9 Q. All right. Looking there at SLED item
10 30 --

11 MS. MAYES: I believe that's already in
12 evidence, Your Honor.

13 Q. Looking there at SLED item 30 being the
14 swabs taken from the front door latch, what if any
15 work did you do on those items?

16 A. I attempted to develop DNA from that
17 item.

18 Q. All right. And were you able to do so?

19 A. No, I was not. My results are that no
20 DNA profile was developed.

21 Q. So looking here at 105 in evidence.
22 Again, the swabs that you have from that door
23 latch?

24 A. Yes, and item 30.1 was swabs from the
25 door handle of the front door. No DNA profile was

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1 developed either from that item.

2 Q. All right. These swabs are located
3 right here in what is marked as State's 168?

4 A. Yes, that is correct. Those are the
5 items that I tested, item 30 and 30.1.

6 MS. MAYES: And I believe 168 is
7 already in evidence, Your Honor.

8 THE COURT: It is.

9 Q. Looking at 168 already in evidence, can
10 you tell us how many swabs you had for that front
11 door area?

12 A. In reference to both items, 30 and 31?

13 Q. Yes.

14 A. There was two swabs from each. Two
15 swabs for item 30, the swabs from the thumb latch
16 from the front door and two swabs from the front
17 door handle item 31.

18 Q. All right. And you said that's going
19 to be the thumb latch and the handle?

20 A. That is correct.

21 Q. All right. Were you able to process
22 each of those swabs with the intent to get a DNA
23 profile?

24 A. Yes, I did.

25 Q. Were you able to develop any DNA

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1 | profile from any of these swabs?

2 | A. No, I was not.

3 | Q. Now, when you are attempting to get a
4 | DNA profile, first let me ask you this, do you
5 | always get one?

6 | A. I do not.

7 | Q. And what are some of the factors that
8 | may play a role in whether or not you're able to
9 | actually develop a DNA profile from any swab
10 | submitted to you?

11 | A. It just depends on if there's enough
12 | genetic information there for me to develop a DNA
13 | profile. It could be a number of factors. It's
14 | just there was no DNA present. DNA also gets
15 | degraded environmental factors such as heat and
16 | moisture significantly decrease my ability to
17 | develop a DNA profile on an item. Those are just
18 | some of the varying factors that would prevent DNA
19 | profile from being together.

20 | Q. All right. And when you mention
21 | environmental factors, tell us what that may
22 | involve when we're talking about an exterior door
23 | such as this?

24 | A. It could be rain, wind, heat from the
25 | sun, those items would definitely contribute to

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1 | lessening my ability to develop a DNA profile.

2 | Q. Now, when a person touches an object or
3 | a surface, do we always necessarily leave DNA
4 | evidence behind?

5 | A. No, not necessarily. People shed
6 | differently as well. Some individuals are heavy
7 | shedders, some are light shedders. There's no
8 | rhyme or reason to it. An individual could be a
9 | heavy shedder one day and a light shedder the next.
10 | It just depends upon their daily function and their
11 | daily routine. So not necessarily if you touch an
12 | item does that mean you leave your DNA there.

13 | Q. So after your analysis of the swabs
14 | collected from the front door area, can you tell us
15 | about the cutting that you mentioned from the white
16 | shirt? I believe that's actually identified by
17 | SLED as an undershirt?

18 | A. Yes, I have three. Three item numbers,
19 | 18.1, 18.2 and 18.3 in reference to that white
20 | undershirt. Would you like me to read from my
21 | report?

22 | Q. All right. Give me a moment. Once an
23 | item like this is collected and submitted to SLED,
24 | I believe you've already identified that there is a
25 | cutting created, are you working with the whole

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1 item or are you working with the cutting?

2 A. Just the cutting that was made from
3 that item for 18.1 for reference.

4 Q. All right. Now, in addition to the
5 cutting, what is meant by the term ownership
6 scraping?

7 A. That's when we were trying to determine
8 who this item may have belonged to. In that effort
9 we try to swab or collect DNA from areas that would
10 touch your skin from that item. So in reference to
11 this shirt, it may be from the collar area, it may
12 be from the armpit area, those are the areas where
13 your skin will come in contact with that shirt most
14 and we'll collect from those areas in hopes of
15 collecting any kind of possible DNA that may have
16 been left there.

17 Q. Okay. So first I want to address that
18 when we're talking about the actual scraping from
19 the white undershirt. Were you able to develop any
20 DNA profiles from that scraping?

21 A. Yes, I was.

22 Q. And this goes to who may wear it the
23 most often?

24 A. That is the general idea, yes.

25 Q. Okay. Tell us about the DNA profiles

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1 | that you were able to develop from this particular
2 | item from the scrapings?

3 | A. If I can give a little context. We use
4 | STRmix which is a software tool that aids us in
5 | interpreting DNA profiles. It also attaches the
6 | statistical weight to that evidence whenever for
7 | making comparison purposes. That statistical
8 | weight comes in the form of a likelihood ratio.
9 | And essentially what that is is just a mathematical
10 | equation to two different outcomes of a scenario.

11 | So, for instance, the likelihood of you
12 | burning your hand, are you more likely to burn it
13 | on a hot stove or are you more likely to burn it on
14 | a countertop. Obviously, you're more likely to
15 | burn it on a hot stove. And essentially that's
16 | what we're doing, we're using STRmix. We're trying
17 | to determine if a known person's DNA is a
18 | contributor given that DNA profile from the
19 | evidence or is it more likely to unidentified
20 | unrelated individual given the DNA profile from the
21 | evidence.

22 | And so I will read from my report for
23 | 18.2. The swabs from the underarm and collar of
24 | the white shirt, the DNA profile similar comparison
25 | was developed and likelihood ratios where this

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1 | profile were calculated using STRmix. We also have
2 | propositions whenever we are comparing each item.
3 | In preparing each standard to that profile from the
4 | evidence, my first proposition said I have
5 | determined that this DNA profile from that item is
6 | a mixture originating from two individuals.

7 | First, I compared Ms. Roselynn Cedenó,
8 | an identified person or two unidentified people.
9 | So my results of the DNA profile is approximately
10 | two times more likely it was Roselynn Cedenó and
11 | identified unrelated individual rather than two
12 | identified unrelated individuals in that mixture.

13 | And my second proposition said I'm
14 | comparing Mr. Shivers, Mr. Vincent Shivers, from
15 | seeing whether or not it's Vincent Shivers and an
16 | unidentified unrelated individual or two
17 | unidentified unrelated individuals. The DNA
18 | profile is approximately 2.2 sextillion times more
19 | likely that Vincent Shivers and an unidentified
20 | unrelated individual contributed to the mixture.
21 | And two unidentified unrelated individuals
22 | contributed to the mixture.

23 | Q. And you said 2.2 sextillion?

24 | A. That is correct.

25 | Q. What is a sextillion?

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1 A. It is 21 zeros over a million. So a
2 significantly high very strong likelihood ratio.

3 Q. And then did you develop a third
4 proposition set?

5 A. Yes. This one and because both Ms.
6 Ceden0 and Mr. Shivers were included, we wanted to
7 put them together and see whether or not that makes
8 sense that both of them are there. So for this one
9 Roselynn Ceden0 and Vincent Shivers contributed to
10 the mixture or two unidentified unrelated
11 individuals contributed to the mixture. And my
12 result is that the DNA profile is 180 sextillion
13 times more likely if it's Roselynn Ceden0 and
14 Vincent Shivers contributed to the mixture than two
15 unidentified unrelated individuals contributed to
16 the mixture.

17 But I also want to preface this by
18 saying this last proposition because it is such a
19 large disparity between the two, if we're just
20 considering Ms. Roselynn Ceden0 to it, we prefer to
21 put more emphasis on proposition set 1 than
22 proposition set 3.

23 Q. All right. And, again, you're using
24 very, very large numbers for likelihood such as
25 sextillion times, but let me ask you this. Were

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1 | you ultimately able to develop a mixture or
2 | determine a mixture of Vincent Shivers and Roselynn
3 | Cedenno?

4 | A. Yes, that's what I'm saying. Yes.

5 | Q. And to what percentage of this mixture
6 | was the Defendant, Vincent Shivers?

7 | A. Mr. Shivers would be considered a 95
8 | percent contributor and Ms. Roselynn Cedenno would
9 | be considered a 5 percent contributor to that
10 | mixture.

11 | Q. All right. Tell us what is meant by
12 | the term contributor?

13 | A. Whenever we have a mixture which is
14 | essentially two or more individuals contributing
15 | DNA to an item, we want to break it down as best we
16 | can to contributors or which ones are the number 1
17 | or the number 2 or number 3 contributor to that
18 | mixture if a third person is there. But it just
19 | determine upon the number of contributors present.

20 | Q. All right. Now, given that I believe
21 | you just said you wanted the greatest weight to be
22 | to the largest contributor?

23 | A. To the number 1 contributor, that is
24 | correct.

25 | Q. All right. And you indicated that the

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1 95 percent is Vincent Shivers?

2 A. That is correct.

3 Q. And the 5 percent is Roselynn Cedenno?

4 A. That is correct.

5 Q. What if anything does this tell you as
6 an expert in the field of DNA regarding the
7 ownership of that white undershirt that we see
8 overhead?

9 A. Most likely because he had the highest
10 likelihood ratio, it would be my understanding that
11 this shirt belongs to him. I'm not saying that's a
12 hundred percent, but that is the idea when we try
13 to collect ownership is that we would be trying to
14 determine who was the owner of who wore that shirt
15 the most.

16 Q. All right. Now, regarding the cutting
17 from the white undershirt, why was that cutting
18 made?

19 A. We were also testing the shirt for any
20 possible blood that was there, so we cut that
21 portion of it -- well, I'm sorry, forensic
22 scientist Rachel Nguyen cut that portion for me
23 that tested positive for blood and then I tested it
24 for DNA.

25 Q. All right. Now, when you're testing

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1 | for DNA, can you tell us whether or not it's that
2 | blood -- that cutting of the blood that you're
3 | actually trying to develop a DNA profile from?

4 | A. Yes. In this instance, yes, I can. I
5 | was able to develop a single source or a only one
6 | person contributed DNA to that item. So in this
7 | instance, I would say that the DNA profile came
8 | from the blood.

9 | Q. Okay. And were you able to identify
10 | whose blood that was based on the standards that
11 | you had received from both Vincent Shivers and
12 | Roselynn Cedeno?

13 | A. Yes. For number 18.1, a DNA profile
14 | suitable for comparison was developed. Roselynn
15 | Cedeno is excluded as a possible contributor and
16 | likelihood ratios for this profile was calculated
17 | using STRmix. My proposition that the DNA profile
18 | was interpreted as a single source meaning it only
19 | came from one individual. Vincent Shivers
20 | contributed to the DNA or an unidentified unrelated
21 | individual contributed to the DNA profile. And my
22 | result is that the DNA profile is that
23 | approximately 24 septillion times more likely if
24 | Vincent Shivers contributed to the profile than an
25 | unidentified unrelated individual contributed the

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1 profile.

2 Q. All right. You're going to have to
3 give us that number one more time.

4 A. I'm sorry. It's 24 septillion.

5 Q. What is a septillion?

6 A. That would be 25 zeros after a million
7 I should say.

8 Q. Greater than a sextillion?

9 A. Yes, it is.

10 Q. Are there even a septillion number of
11 people on this planet?

12 A. No, there's not.

13 Q. So in this instance were you able to
14 determine whether it's a mixture or only one
15 contributor?

16 A. It was only one contributor for 18.1?

17 Q. So that would be one hundred percent
18 contributor?

19 A. That is correct.

20 Q. And who did you determine that to be?

21 A. Mr. Vincent Shivers.

22 Q. Now, did you also receive the cutting
23 from the blue onesie?

24 A. Yes, I did.

25 Q. Looking here overhead at 214, do you

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1 have gloves up there, Mr. Stewart?

2 A. Yes, I do.

3 Q. Looking at that particular item, can
4 you tell us where the cutting was made?

5 A. I never saw it, but I can try to look
6 and see.

7 Q. Okay. Again, that cutting arrived to
8 you sealed?

9 A. Yes, I did. I have identified where
10 Ms. Nguyen took the cutting from.

11 Q. And where is that?

12 A. It is from the exterior left sleeve
13 near the cuff of the blue adult furry onesie.

14 Q. Does that appear to be consistent with
15 this location here?

16 A. Yes, it does.

17 Q. Can you tell us whether or not you were
18 able to develop a DNA profile from that item?

19 A. Yes. Presumptive testing for blood was
20 positive. A DNA profile --

21 Q. Okay. Let me stop you right there and
22 we're going to come back to that item. There was
23 mention of fingernail clippings in this case. Do
24 you have those before you?

25 A. Yes, I do.

SAMUEL STEWART - DIRECT EXAMINATION BY MS. MAYES

1 Q. All right. And before we do that, I
2 neglected to mention one item.

3 A. Our SLED item 3 is the right hand
4 fingernail clippings from Ms. Ceden0 and item 4 is
5 the left-hand fingernail clippings from Roselynn
6 Ceden0.

7 Q. All right. And, Agent Stewart, I
8 forgot to mention one item. Regarding that white
9 undershirt, there was the scraping for ownership.
10 There was also the cutting for blood. Can you tell
11 us whether or not you received hair with this item?

12 A. Yes, I did receive a hair from the
13 white undershirt. It was our item 18.3.1.

14 Q. All right. Were you able to develop a
15 DNA profile from the hair?

16 A. I did, but the posture DNA profile
17 developed was insufficient for interpretation. And
18 essentially what that means is that I just did not
19 have enough genetic material that was suitable for
20 comparison purposes.

21 Q. All right. So given that, are you able
22 to reach any kind of conclusion as to who that hair
23 belonged to?

24 A. No, I did not.

25 Q. So now we're going to go back to the

SAMUEL STEWART - DIRECT EXAMINATION BY MS. MAYES

1 fingernail clippings. And you have those before
2 you I believe already in evidence?

3 A. Yes, I do.

4 Q. If you could refer to them. How many
5 fingernail clippings did you have and where were
6 they from?

7 A. I'm sorry, you asked me how many
8 fingernail clippings were present?

9 Q. How many fingernail clippings were
10 submitted to you from the autopsy of Roselynn
11 Cedenno?

12 A. For item 3 the right hand fingernail
13 clippings, I had five separate fingernail clippings
14 that were present. For the left hand fingernail
15 clippings I also had five separate fingernail
16 clippings that were present.

17 Q. Regarding the right hand, were you able
18 to determine if there was a DNA profile present?

19 A. Yes, I was able to develop a DNA
20 profile.

21 Q. And tell us about that if you would?

22 A. A DNA profile suitable for comparison
23 was developed likelihood ratios for this profile
24 were calculated using STRmix.

25 Q. All right. And I'm going to need you

SAMUEL STEWART - DIRECT EXAMINATION BY MS. MAYES

1 to slow down a little bit for our court reporter.

2 A. I'm sorry. The DNA profile was
3 interpreted as a mixture originating from two
4 individuals. Roselynn Cedeno is contributing to
5 the mixture. Roselynn Cedeno and Vincent Shivers
6 contradicted to the mixture. Roselynn Cedeno and
7 an unidentified unrelated individual contributed to
8 the mixture.

9 Q. And just to clarify, are those your
10 findings or are those your proposition sets?

11 A. These are my proposition sets.

12 Q. Okay. So this is your hypothesis for
13 what you're trying to determine?

14 A. That is correct.

15 Q. Okay. And tell us how all of your
16 proposition sets turned out.

17 A. Okay. The DNA profile is approximately
18 120 quadrillion times more likely if Roselynn
19 Cedeno and Vincent Shivers contributed to the
20 mixture than if Roselynn Cedeno and an unidentified
21 unrelated individual contributed to the mixture.

22 And if I may explain a little bit more
23 about this one. Because when I evaluated the
24 profile, I could see that Ms. Cedeno's DNA profile
25 was present throughout the profile which is not

SAMUEL STEWART - DIRECT EXAMINATION BY MS. MAYES

1 uncommon since they came from her. So I told the
2 system -- or the software that I know Ms. Roselynn
3 Cedenno is contributing and I wanted to just set
4 aside her DNA types and I only want to focus on the
5 DNA types that are foreign to Ms. Cedenno. And so
6 that is what I'm comparing when I'm doing this and
7 this is my results as far as Ms. Cedenno and Mr.
8 Vincent Shivers.

9 Q. All right. And you said that amount is
10 how much?

11 A. 120 quadrillion times more likely.

12 Q. 120 quadrillion times more likely.
13 That is it Roselynn Cedenno and Vincent Shivers?

14 A. That is correct.

15 Q. Now, in looking at this, did you see
16 any indication of any other DNA under the right
17 hand fingernail clippings other than the Defendant,
18 Vincent Shivers and Roselynn Cedenno?

19 A. I did not.

20 Q. Did you find any evidence of foreign
21 DNA or a third contributor?

22 A. I did not.

23 Q. And looking at this, how much
24 percentage contributor was Ms. Cedenno?

25 A. She was an 87 percent contributor and

SAMUEL STEWART - DIRECT EXAMINATION BY MS. MAYES

1 Mr. Shivers would be the 13 percent contributor.

2 Q. Now, looking at the left hand. Were
3 you able to develop a DNA profile from the
4 fingernail clippings of the left hand from autopsy?

5 A. Yes, I did.

6 Q. And I'm going to ask you the same
7 question. What if anything did you determine and
8 what proposition sets did you consider?

9 A. The DNA profile mixture interpreted --
10 excuse me. The DNA profile was interpreted as a
11 mixture originating from two individuals. Roselynn
12 Ceden0 is contributing to the mixture. Roselynn
13 Ceden0 and Vincent Shivers contributed to the
14 mixture. Roselynn Ceden0 and an unidentified
15 unrelated individual contributed to the mixture?

16 Q. And, again, are these your findings or
17 your hypothesis?

18 A. My hypothesis or possible outcomes,
19 that's correct.

20 Q. Okay. And considering all of those
21 possible outcomes, what did you determine?

22 A. That the DNA profile is approximately
23 5.1 septillion times more likely if Roselynn Ceden0
24 and Vincent Shivers contributed to the mixture than
25 if Roselynn Ceden0 and an unidentified unrelated

SAMUEL STEWART - DIRECT EXAMINATION BY MS. MAYES

1 individual contributed to the mixture.

2 So this one is essentially similar to
3 the last one. I saw DNA types attributable to Ms.
4 Cedenno which I expected since these were coming
5 from her, these were her fingernail clippings and I
6 told the software to set aside her DNA types and to
7 only look at the foreign DNA types that were
8 present.

9 Q. Did you see any indication upon your
10 DNA analysis of the left hand clippings of Roselynn
11 Cedenno of any third party contributor?

12 A. I did not.

13 Q. Did you find any evidence of foreign
14 DNA other than Roselynn Cedenno and Vincent Shivers?

15 A. I did not.

16 Q. What percentage did you determine was
17 Vincent Shivers?

18 A. In this one, Vincent Shivers would be
19 the 53 percent contributor and Ms. Roselynn Cedenno,
20 she would be the 47 percent contributor.

21 Q. So as to the left hand, was there
22 someone with even more DNA under that -- under
23 those fingernail clippings than Roselynn herself?

24 A. Yes, there was.

25 Q. Who was that person?

SAMUEL STEWART - DIRECT EXAMINATION BY MS. MAYES

1 A. Mr. Vincent Shivers.

2 Q. I'm going to show you now what is
3 premarked as 233 and 234. What are we looking at
4 here?

5 A. For this item, these are my DNA
6 extracts. So these are the -- it's tubes here.
7 But these are the tubes that contain the DNA that I
8 used to develop the DNA profile from the items
9 tested.

10 Q. Okay. And then what are we looking at
11 here for 233?

12 A. This is the cutting from the blue
13 onesie, my item 32.1.

14 Q. And I think you previously indicated
15 that that arrived to you unsealed -- I mean,
16 sealed?

17 A. That is correct.

18 Q. And what about the DNA extracts, who
19 actually developed these?

20 A. I did.

21 Q. And did you maintain a proper chain of
22 custody as to each of these items?

23 A. Yes, I did.

24 MS. MAYES: Your Honor, this would be
25 233 and 234 for evidence. Being the 234 being the

SAMUEL STEWART - DIRECT EXAMINATION BY MS. MAYES

1 DNA extracts. 233 being the cutting from the blue
2 onesie.

3 THE COURT: Any objection?

4 MS. BARBIER: No objection.

5 THE COURT: It's admitted.

6 (WHEREUPON, State's Exhibit Numbers 233
7 and 234 were entered)

8 Q. Looking here at the cutting from the
9 blue onesie. Why was the cutting made?

10 A. It was made because it was to be
11 positive for blood, so we wanted to test that area
12 to see if it was actually positive for blood?

13 Q. All right. Can you tell us what you
14 found?

15 A. Presumptive testing for blood was
16 positive. A DNA profile suitable for comparison
17 was developed. Roselynn Cedenno is excluded as a
18 possible contributor. Likelihood ratios for this
19 profile were calculated using STRmix. And my
20 proposition set, the DNA profile was interpreted as
21 a single source meaning it only came from one
22 individual. Vincent Shivers contributed to the DNA
23 profile an unidentified unrelated individual
24 contributed to the profile and my result is that
25 the DNA profile is approximately 24 septillion

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 times more likely if Vincent Shivers contributed to
2 the profile than if an unidentified unrelated
3 individual contributed to the profile.

4 Q. Were you able to determine what
5 percentage of a contributor Vincent Shivers was to
6 that finding of blood on the blue onesie?

7 A. One hundred percent.

8 Q. Looking at all of your DNA findings
9 across the board, Agent Stewart, including the
10 cutting from the white undershirt, the cutting from
11 this blue onesie and then the fingernail clippings
12 from autopsy of the left hand and right hand of
13 Roselynn Cedenno, did you ever find any evidence of
14 a third party contributor?

15 A. Outside of Mr. Shivers and Ms. Cedenno?

16 Q. Yes.

17 A. No, I did not.

18 Q. Did you ever find any evidence of
19 foreign DNA on the body of -- or underneath the
20 fingernail clippings of Roselynn Cedenno?

21 A. No, I did not.

22 Q. Or on that shirt and blue onesie?

23 A. No, I did not.

24 MS. MAYES: Beg the Court's indulgence.

25 THE COURT: Take your time.

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 MS. MAYES: Nothing further of Agent
2 Stewart at this time, Your Honor.

3 THE COURT: Okay. Thank you. Let me
4 just ask, Mr. Foreman, y'all have been back in the
5 box for an hour and a half now, do y'all need a
6 break or can we get through cross? If one goes, we
7 all go.

8 THE FOREPERSON: I think we're good.

9 THE COURT: Okay. Ms. Barbier?

10 MS. BARBIER: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. BARBIER:

13 Q. Good afternoon, Agent Stewart.

14 A. Good afternoon.

15 Q. So, Agent Stewart, I didn't do all that
16 well in science in high school, but I heard you say
17 two things loud and clear. Let me make sure I've
18 got this correct. You analyzed two items of
19 clothing; is that right? Or two samples from two
20 items of clothing?

21 A. Yes, the white shirt and the onesie;
22 that's correct.

23 Q. So a cutout from a white t-shirt;
24 correct?

25 A. 18.1, that is correct.

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 Q. And a cutout from a blue onesie that
2 was hanging in the master bedroom closet as we saw
3 in the picture; correct?

4 A. That is correct.

5 Q. Okay. And the analysis that you did of
6 the white t-shirt indicated that Roselynn Cedenos
7 blood was not found on that t-shirt; is that right?
8 She was excluded?

9 A. From 18.1, yes, she was excluded from
10 that. That is correct.

11 Q. Okay. So her blood is not the blood on
12 that t-shirt; correct?

13 A. Not from item 18.1.

14 Q. Okay. And from your depiction of the
15 t-shirt, it's just a tiny spot of blood; right?

16 A. It was small, that is correct.

17 Q. Yeah. Okay. And then the blue onesie,
18 your analysis concluded that that's not Roselynn
19 Cedenos blood; correct.

20 A. That is correct.

21 Q. So you were able to exclude the fact
22 that her blood was on any clothing -- on the
23 clothing that you analyzed; correct?

24 A. That is correct.

25 Q. You don't even know whose clothing that

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 was, do you?

2 A. I do not.

3 Q. Okay. Now if I went home this
4 afternoon and I collected some items from my house
5 that I touch every day, that I'm around every day,
6 would you be able to you think develop a DNA
7 profile from those items of myself?

8 A. It is likely. Like I said, touch DNA
9 is volatile. So sometimes you do leave some and
10 sometimes you don't. But something that you wear
11 on a continuous basis I would expect your DNA to be
12 there. I would say so.

13 Q. And I'll represent to you that the only
14 other inhabitant at my house right now is my
15 husband because we're empty nesters. So would you
16 also most likely be able to develop a DNA profile
17 of my husband?

18 A. From your clothing?

19 Q. No. From items collected from my home
20 that we both use every day?

21 A. It is possible, yes.

22 Q. Because isn't it a fact that the
23 average human sheds about 400,000 skin cells a day
24 that contain DNA?

25 A. I can't say exactly the number because

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 we've done studies so there's no real concrete
2 number on the amount of skin cells that's spread
3 between person to person. But I do know that some
4 people do shed probably more than that, probably
5 shed less than that, so I can't say a concrete
6 number.

7 Q. Okay. It's just an average, I'm not
8 asking you to commit. But we shed a lot of DNA
9 every day everywhere we go; isn't that right?

10 A. It is possible for a person to shed a
11 lot or shed a little?

12 Q. And I've been sitting in that chair all
13 week and if you swab that chair you probably find
14 my DNA, I've been touching the arms of that chair
15 and I've been sitting in that chair all week, don't
16 you think you'd find my DNA there?

17 A. It is possible.

18 Q. Okay. So it's a fact isn't it that DNA
19 test results cannot tell you also when DNA was left
20 on an item?

21 A. That is correct.

22 Q. Okay. And they can't you what time it
23 was left?

24 A. That is correct.

25 Q. Okay. And they can't tell you what

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 date it is was left?

2 A. That is correct.

3 Q. And they also can't tell you whether it
4 was deposited consensually or nonconsensually;
5 correct?

6 A. That is correct.

7 Q. Okay. So, for example, sometimes my
8 husband asks me to scratch his back. And if you
9 take fingernail clippings off of me today it might
10 be that you could very well find his DNA under my
11 fingernails clippings, couldn't you?

12 A. That is possible.

13 Q. Okay. In fact, if I just touched his
14 face before I went to work, you could find possibly
15 his DNA under my fingernails; wouldn't you?

16 A. That is possible.

17 Q. In fact, there have been a number of
18 scientific studies that show that married couples
19 or people who cohabitate are going to have DNA on
20 each other; isn't that accurate?

21 A. Yes, that's possible. They're living
22 together, interacting with one another, it is
23 possible for DNA to rub off on one another.

24 Q. And it is not unusual at all for
25 someone's spouses DNA to be under their

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 | fingernails, is it?

2 | A. They're living together?

3 | Q. They're living together.

4 | A. Yes, that is possible.

5 | Q. They're sleeping in the same bed,
6 | they're around each other?

7 | A. Yes, that is possible.

8 | Q. Now, really what I'm describing is the
9 | concept of DNA transfer, isn't it?

10 | A. Yes, that is correct.

11 | Q. Okay. And so not only can people
12 | transfer DNA from person to person just by touching
13 | or being in the same presence, but you can also
14 | transfer it to an object; correct?

15 | A. That is correct.

16 | Q. Okay. And so the fact that you did not
17 | find DNA on the front door handle in this case,
18 | that's not unusual either if the front door isn't
19 | used very often, is it?

20 | A. That is correct.

21 | Q. Okay. As you said, it's an exterior
22 | door, it's subject to the conditions of the weather
23 | and the DNA may have wiped off; correct?

24 | A. That is possible.

25 | Q. However, it would be far more likely to

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 get a good reading or a good profile of DNA on an
2 interior door, wouldn't it?

3 A. If it's something that's handled on a
4 daily basis, then, yeah, I could say that is
5 possible.

6 Q. And so, for example, if the victim's
7 body was found in a bedroom where there was an open
8 or an unlocked exterior door, it would have been
9 very advantageous for law enforcement to have
10 swiped or swabbed the interior door handle,
11 wouldn't it?

12 A. I couldn't tell them how to process a
13 scene, I don't know anything about that.

14 Q. Okay. But do you think you would be
15 more likely to find DNA on an interior door handle
16 or on an exterior door handle?

17 A. It just depends on which one is
18 handled. Like I said, I've gotten DNA from
19 exterior door handles as well. Like I said, it
20 just depends on the factors of it being handled and
21 environmental factors as well. So I can't say
22 which one I would expect to get DNA more from.

23 Q. Okay. But you would agree with me that
24 an interior door handle is not exposed to the
25 elements; correct?

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 A. That is correct.

2 Q. And you were not given a swab from an
3 interior door handle to process, were you?

4 A. No, I was not.

5 Q. Okay. Now, in talking about DNA
6 transfer, it can transfer just as easy as touching
7 someone's hand; right?

8 A. It is possible.

9 Q. Okay. And then you also have what we
10 call secondary transfer; isn't that right?

11 A. Yes.

12 Q. And secondary transfer is if I touch my
13 husband's hand and then he touches the counter,
14 that could be transferred to the counter, couldn't
15 it? The DNA?

16 A. If he --

17 Q. If I touch my husband's hand and then
18 my husband puts that hand on the counter, he could
19 transfer my DNA to the counter; isn't that right?

20 A. Yes, that's correct.

21 Q. Okay. So, again, it's just not unusual
22 to find two people's DNA who live in a particular
23 house, is it?

24 A. No, it is not.

25 Q. Particularly if there's no other

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 | members of that household; is that right?

2 | A. Yes, that is correct.

3 | Q. Now, I want to make sure we're talking
4 | about the same report. So I'm going to ask you
5 | were there variations of your report, were there
6 | different dates of your report? Because I have
7 | three. I have one dated January 22, '21, February
8 | 5, '21 and April 29, '21?

9 | A. Yes, that's correct. I have three
10 | different reports in the case.

11 | Q. Okay. Is the April 29th report the
12 | final report?

13 | A. Yes, it is.

14 | Q. Okay. So I'm going to ask you about
15 | them. The other ones were your preliminary
16 | findings; is that right?

17 | A. Well, it was supplemental report. I
18 | had an initial report and then more evidence was
19 | submitted, so I gave a supplemental report is what
20 | we call it. And then when more evidence is
21 | submitted then another supplemental report is
22 | issued as well.

23 | Q. Okay. So as I understand it, you -- in
24 | item number 2 that the blood spots standard from
25 | Ms. Ceden0 that you developed her known profile

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 from that; is that correct?

2 A. That is correct.

3 Q. Okay. And the buccal swabs are what
4 you develop the DNA profile for Mr. Shivers; is
5 that right?

6 A. That is correct.

7 Q. Okay. The pulled scalp hair, you
8 indicate that there was no analysis performed. And
9 why was that?

10 A. Well, sometimes we get more than one
11 known standard from autopsy, so if the blood had
12 not worked, then I would have gone to the pulled
13 scalp hair to try to develop a DNA profile to be
14 used as a known standard. But because of the blood
15 work there was no need for me to use the pulled
16 scalp hair.

17 Q. And so we've already talked about the
18 fingernail clippings, but the fact that both
19 Roselynn Cedenos DNA and Vincent Shivers's DNA
20 were found from her fingernail clippings is not
21 really an unusual finding for people who
22 cohabitate, is it?

23 A. It is not.

24 Q. Okay. And so the undershirt, we've
25 already discussed, that was not Ms. Cedenos blood

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 or spot of blood on that shirt; is that correct?

2 A. From item 18.1, that is correct.

3 Q. And I imagine you have nothing to do
4 with this, but do you know why this t-shirt was
5 chosen for your analysis?

6 A. I do not.

7 Q. And do you know why this blue onesie
8 was chosen?

9 A. I do not.

10 Q. And these scrapings from the underarms
11 and the collar of the white undershirt, this was --
12 this was a shirt -- this sample the 18.2, you
13 determined that this contained Roselynn Cedeno's
14 and an unidentified unrelated individual
15 contributor; is that right?

16 A. Well, that was the proposition set 1.
17 Each proposition set I'm comparing that known
18 profile to it. So for proposition set 1, I was
19 comparing Ms. Roselynn Cedeno. And proposition set
20 2 I was doing Mr. Vincent Shivers. And then once I
21 can determine that both of them are being included
22 as possible contributors, there's a proposition set
23 3 to see if their DNA profiles together made sense
24 as contributors to that profile from the evidence.

25 Q. Okay. And would it be unlikely, you

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 know, if a couple who cohabitate together, who
2 touch each other's clothing, who share the same
3 closet or have clothes in the same room or sleep in
4 the same bed have both of their DNA on a t-shirt?

5 A. No, it's not uncommon.

6 Q. Okay. Now, some of these profiles you
7 said were insufficient for interpretation; is that
8 right?

9 A. The hair from the white shirt, that
10 item was too partial for any kind of
11 interpretation, that's correct.

12 Q. Okay. And there is technology where
13 they might be able to develop that DNA profile,
14 isn't there?

15 A. We don't do it at SLED, we need the
16 root material, but I have heard of other
17 technologies that may be able to develop a profile
18 from a hair that doesn't have definite root
19 material. But I'm not very sure about the
20 technology myself.

21 Q. Okay. And so is there a limit on the
22 number of items that can be submitted for DNA
23 analysis at SLED?

24 A. Essentially, no. We do ask that they
25 try to limit it to the most five probative items,

SAMUEL STEWART - CROSS-EXAMINATION BY MS. BARBIER

1 but if they find out that there's more items that
2 they determine need to be tested then they can
3 submit those items.

4 Q. Okay. That didn't happen in this case;
5 is that right?

6 A. Well, they did submit more items and
7 then initially I got some items and I put out a
8 report and then they submitted some other items and
9 so I tested those. So that's why I have three
10 different reports. Each report includes additional
11 items that were sent for testing.

12 Q. Were there any items that you tested
13 that you haven't testified about here today?

14 A. No, there are not.

15 Q. Okay. And it's possible -- are you
16 familiar with the evidence log in this case?

17 A. The chain of custody?

18 Q. No. The evidence list by case number.
19 Have you seen this? This is a document that we'd
20 been given that lists all the things that were
21 seized from Mr. Shivers home?

22 A. No, I do not access to that.

23 Q. Okay. But let me ask you this, is it
24 possible that you can sometimes develop a DNA
25 profile from shell casings?

SAMUEL STEWART - REDIRECT EXAMINATION BY MS. MAYES

1 A. It is possible. I will admit to this,
2 it's not likely. Shell casings just have a very
3 low probability of giving us a DNA profile, but we
4 do test it if we see fit for us to test it.

5 Q. Did they ask you to do that in this
6 case?

7 A. I did not get shell casings to be
8 tested, no.

9 Q. Okay. Did they ask you -- is it
10 possible to get DNA profiles from, you know,
11 furniture within the home?

12 A. We would need like a target area, the
13 pinpoint area. Like we couldn't do an entire couch
14 or an entire sofa, but if they like pinpointed the
15 area and they were able to either swab or maybe
16 take a cutting from that area, that is possible.

17 Q. How about from a blanket that somebody
18 was wrapped in?

19 A. Again, there would need to be like a
20 pinpoint area from that blanket. We couldn't do an
21 entire blanket for DNA, but an area or section of
22 that if they thought it was necessary, that is
23 possible.

24 Q. But they didn't give you sample from
25 any blankets or any sheets for you to do any

SAMUEL STEWART - REDIRECT EXAMINATION BY MS. MAYES

1 analysis on, did they?

2 A. No, they did not.

3 Q. Okay. So the items they gave you were
4 the blue onesie, the -- I'm sorry, the sample of
5 the blue onesie, the sample from the white t-shirt
6 and then the scrapings; is that right and some
7 swabs from the front door?

8 A. And the known standards; that's
9 correct.

10 MS. BARBIER: Okay. Beg the Court's
11 indulgence.

12 THE COURT: Take your time.

13 MS. BARBIER: Nothing further.

14 THE COURT: Any redirect?

15 MS. MAYES: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. MAYES:

18 Q. So, Agent Stewart, just to follow-up a
19 little bit on that. You did receive the item with
20 -- that was positive for blood?

21 A. For the shirt? I'm sorry.

22 Q. The shirt.

23 A. 18.1, yes.

24 Q. And did you have information as to
25 whether or not that came from the crime scene?

SAMUEL STEWART - REDIRECT EXAMINATION BY MS. MAYES

1 A. Yes, I know it came from the crime
2 scene; that is correct.

3 Q. Okay. So you received an item of
4 evidence for DNA analysis from the crime scene that
5 contained a blood stain?

6 A. That is correct.

7 Q. And were you aware as to why the blue
8 onesie was submitted as evidence?

9 A. (No response)

10 Q. Did you have information as to whether
11 or not it came from the crime scene?

12 A. Yes, I did. Yes.

13 Q. And were you able to identify it as
14 blood yourself?

15 A. Yes, I did.

16 Q. So you had an item from the crime scene
17 with a blood stain?

18 A. That is correct.

19 Q. And then in addition to that, you had
20 fingernail scrapings from the victim that were
21 taken at autopsy?

22 A. That is correct.

23 Q. Now, you indicated that it's not likely
24 in your experience to develop a DNA profile from a
25 fired shell casings, why is that?

SAMUEL STEWART - REDIRECT EXAMINATION BY MS. MAYES

1 A. Because it's subjected to so much heat
2 that usually any possible DNA that's there gets
3 burned off as it's being discharged from the
4 firearm. As I stated, it's just not likely that we
5 get it, but we still test it just in case. But
6 it's a very low probability that we get a DNA
7 profile because of that such an explosion, there's
8 so much heat that usually kills off any potential
9 DNA.

10 Q. All right. And when a fired casing
11 hits the floor, for example, does it also have the
12 possibility of being contaminated by other DNA
13 that's present?

14 A. That is possible.

15 Q. And I think you were asked about a
16 blanket and your response is that you're not able
17 to process an entire blanket, why is that?

18 A. It's just too large of an area for us
19 to be able to process. We need something that's
20 like a pinpointed area or a section. But something
21 as large as a blanket it's just not feasible for us
22 to test the entire -- or that entire item for DNA.

23 Q. So, for example, if you had a blood
24 stain, would you be able to itemize just that blood
25 stain?

SAMUEL STEWART - RECROSS EXAMINATION BY MS. BARBIER

1 A. Yes, that is correct.

2 Q. Within a blanket?

3 A. That is correct.

4 Q. And then finally I wanted to ask you
5 when it comes to some of the examples that counsel
6 gave you like shaking hands or scratching a back,
7 would you expect any type of DNA under fingernails
8 to last even beyond handwashing or what may
9 potentially degrade or impact DNA that's under our
10 fingernails?

11 A. As she stated, washing, hand sanitizer,
12 even maybe wiping the hands, anything that may come
13 in contact, touching of the items. Those could
14 take away from the possibility of DNA I guess of
15 another person being there. Like I said, it's not
16 a hundred percent. This is all just possible, but
17 those would be factors that I would think
18 that would maybe take away any kind of DNA that
19 maybe present under a fingernail.

20 Q. Something as simple as washing one's
21 hand?

22 A. Yes, I would say so.

23 Q. Or taking a shower?

24 A. Yes, I would say so.

25 Q. And in this case as to the left hand,

Samuel Stewart - Recross Examination by Ms. Barbier

1 would you ordinarily expect someone else to have
2 more DNA under the fingernail than the person who
3 actually -- than the person themselves?

4 A. No, it's not common. I have seen it,
5 but it's not a common thing to happen.

6 Q. What is most common situation?

7 A. The person whose fingernails, they're
8 usually the number one that contributed the most
9 DNA to that item.

10 MS. MAYES: Thank you. Nothing
11 further.

12 MS. BARBIER: Just briefly.

13 RECROSS EXAMINATION

14 BY MS. BARBIER:

15 Q. Agent Stewart, you -- DNA can survive
16 the washing of hands; correct?

17 A. Yes, it can.

18 Q. I could go take a shower and still have
19 somebody else's DNA on me; right?

20 A. It is possible.

21 MS. BARBIER: Okay. Nothing else.
22 Thank you.

23 THE COURT: May I excuse Mr. Stewart?

24 MS. MAYES: Yes, Your Honor. May we
25 approach?

1 THE COURT: Yes.

2 (WHEREUPON, there was a bench
3 conference)

4 THE COURT: All right. Mr. Foreman and
5 ladies and gentlemen of the jury, it's Friday. And
6 I'm going to tell you, I think y'all have been just
7 troopers to have worked late. I know we've worked
8 late two nights. Y'all offered to do 30 minute
9 lunches. I mean, y'all are troopers. My hat's off
10 to you.

11 However, it's obvious we're not going
12 to finish this case today. So Monday morning, let
13 me kind of give you the schedule. Monday I have
14 another jury to pick and it is probably going to
15 take me until about 11:00 to get it done. So I'm
16 going to ask y'all to come back to the courthouse
17 if y'all could be here around 11. Hopefully we can
18 get started at 11:30. Either that or we work on a
19 Saturday and I got the impression that a Saturday
20 was not exactly what the jury wanted to do and I'm
21 trying to be reasonable and work around your
22 schedules because I know everybody's working and we
23 got a late start on this trial to start with.
24 Usually we can finish in a week, but we just got a
25 late start for other reasons that were unforeseen.

1 Let me tell you, it's a weekend. A lot
2 of stuff happens over the weekend. Don't talk
3 about this case because we're almost to the end of
4 it. Don't do it. Don't read anything. Don't
5 research anything. Don't get on the internet and
6 look up anything or anybody. Okay. Because I only
7 have one alternate.

8 All right. With that said, I hope
9 y'all have a great weekend. I will see you -- if
10 y'all are here by 11:15, I think we'll start at
11 11:30 on Monday. Okay. I hope y'all have a great
12 weekend. Thank you.

13 THE FOREPERSON: Thank you, Your Honor.
14 (WHEREUPON, the jury exits the
15 courtroom at 3:55 p.m.)

16 THE COURT: All right. If I could see
17 the pathologist. What is his name, Ms. Mayes.

18 MS. MAYES: Dr. Thomas Beaver.

19 THE COURT: Dr. Beaver, how are you?

20 DR. BEAVER: Fine, thank you, ma'am.

21 THE COURT: I just wanted to let you
22 know that it was my decision to go ahead and stop
23 court because I still have a couple of matters to
24 take up with the lawyers. I'm going to tell you,
25 our jury has been here one night to 6:30, one night

1 to 5:30. We got a late start on this case for some
2 unforeseen reasons that just couldn't be helped.

3 I was not going to keep them because I
4 don't believe these lawyers are going to be brief
5 with you. I think your testimony is really
6 important in this case and I do not -- I did not
7 want to keep them until 6:00 or 6:30 tonight.

8 DR. BEAVER: Yes.

9 THE COURT: So I'm going to send them
10 home.

11 DR. BEAVER: Okay.

12 THE COURT: Now, with that said and let
13 me tell you the scheduling because I had to tell
14 them also. Our option was to come back on
15 Saturday. None of them wanted to do that and I
16 don't blame them. Monday morning I have another
17 jury to pick that I'm going to pick. I ought to
18 finish them by 11 and we will start this case I've
19 asked the jurors to come in at 11:15 to be ready to
20 go by 11:30. And it appears you are the first
21 witness up and they tell me you're going to be a
22 long witness.

23 I just hate that it's 4 o'clock. If we
24 had you earlier I would have gotten to you, but we
25 just didn't. So can you be available on Monday at

1 around 11:30?

2 DR. BEAVER: Sure. Absolutely. No
3 worries. No worries. I understand. So you want
4 me here around 11:30 on Monday?

5 THE COURT: Well, Dr. Beaver, I do
6 apologize. I know me, I start on time.

7 DR. BEAVER: Okay. 11:30 on Monday,
8 I'll be here. I'm going to probably get here a
9 little early because I like to settle down a little
10 bit after the drive, but --

11 THE COURT: Yeah, and I'm going to tell
12 you, he is the first one up; right, Ms. Mayes?

13 MS. MAYES: He would be, Your Honor.

14 THE COURT: And I would imagine, Dr.
15 Beaver, you're going to be with us for a little
16 while.

17 DR. BEAVER: No worries. Next week is
18 a calm week for me. This past week wasn't so. I
19 was very busy, I was on service at MUSC, so that
20 means I'm on the floor. But next week is my paper
21 week, so I would just be doing paperwork and
22 catching up reports.

23 THE COURT: See, we're saving you.

24 DR. BEAVER: You are. You're getting
25 me out of the office. Thank you.

1 THE COURT: Thank you, Dr. Beaver, and
2 I'll see you on Monday.

3 All right. I'm going to go ahead, Mr.
4 Swerling, if you don't mind only because it is a
5 Friday and I usually do this when there's a weekend
6 coming and I know that we're getting towards the
7 end of the case that I would like to address Mr.
8 Shivers. And I'd like to read him his right to
9 testify or not to testify. So maybe he can think
10 about what I've said over the weekend.

11 Generally, I do that with everybody
12 when it comes close and we have the weekend to, you
13 know, think about things. I'm going to ask the
14 clerk to place you under oath.

15 VINCENT SHIVERS,
16 being first duly sworn, was examined and testified
17 as follows:

18 MR. SHIVERS: According to Matthew 5:33
19 I'm not --

20 MR. SWERLING: Answer the question.

21 MR. SHIVERS: I am answering the
22 question as the Bible says. I'm agreeing to give
23 you my correct yah and nay and the Bible says I'm
24 not to take an oath under god, so that's all I was
25 saying. Yes, I'm agreeing to answer your questions

1 correctly.

2 THE COURT: Okay. Well, you don't have
3 to take an oath under god, just let me ask you, do
4 you attest to tell the Court the truth or not the
5 truth?

6 MR. SHIVERS: The whole truth and
7 nothing but the truth.

8 THE COURT: There you go. I'll take
9 that. All right. Mr. Shivers, now I want you to
10 listen to me because this important. At this time
11 I am going to explain to you certain of your
12 rights. If you do not understand anything I say,
13 please let me know. If you want me to explain
14 anything more in detail, please let me know. Do
15 you understand?

16 MR. SHIVERS: Yes, ma'am.

17 THE COURT: We have now reached the
18 stage of the trial where you may present your
19 defense. We're not quite there yet, but I want you
20 to think about it because on Monday we're probably
21 going to reach you. Okay.

22 You have the right to claim the
23 protections given to you by the Fifth Amendment to
24 the Constitution of the United States. This
25 Amendment states in part no person shall be

1 compelled in any criminal case to be a witness
2 against himself. This means you cannot be required
3 to testify in the case. You have the right to
4 testify on your own behalf; however, no one can
5 make you testify. This is a personal right and no
6 one can waive this right except you.

7 If you do decide to testify, you will
8 be subject to the same rules that govern other
9 witnesses -- I'm sorry, let me do that again. You
10 will be subject to the same rules that govern other
11 witnesses and you may be examined and
12 cross-examined on any relevant issue in the case.

13 In addition if you have any convictions
14 involving dishonesty or false statement or for
15 crimes punishable by imprisonment for more than one
16 year and this Court determines that the probative
17 value of admitting this evidence outweighs its
18 prejudicial affect to you, the Solicitor will be
19 able to introduce your record to attack your
20 credibility.

21 If decide to testify, this decision is
22 on your part and must be freely, voluntarily, and
23 intelligently made with knowledge of the
24 protections given to you by the Fifth Amendment and
25 the consequences of your decision to testify.

1 If you decide not to testify, I will
2 instruct the jurors that they cannot give the fact
3 that you did not testify any consideration
4 whatsoever and that there is to be absolutely no
5 prejudice to you because you did not testify. It
6 is left entirely up to you whether or not you
7 testify. You may talk with your attorney, your
8 family and friends or anyone else, but the final
9 decision will be left entirely up to you. Do you
10 understand what I've explained to you.

11 MR. SHIVERS: Almost all of that except
12 the part where you said something about I could
13 somehow introduce some --

14 THE COURT: If you have any criminal
15 convictions. I'll read it to you again.

16 If you decide to testify, you will be
17 subject to the same rules that govern other
18 witnesses and you may be examined and
19 cross-examined on any relevant issue in the case.
20 If you have any convictions involving dishonesty or
21 false statement or for crimes punishable by
22 imprisonment for more than one year and this Court
23 determines that the probative value of admitting
24 this evidence outweighs it's prejudicial affect to
25 you, the Solicitor will be able to introduce your

1 record to attack your credibility.

2 Let me ask the solicitor's office.

3 Does he have a record?

4 MS. MAYES: He does, Your Honor.

5 However, he falls just outside of the ten year
6 range and we want to protect this case for
7 appellate purposes, so we do not intend to impeach
8 on those items.

9 THE COURT: Thank you. So I'm going to
10 tell you, you just heard the Solicitor. Mr.
11 Shivers, while you do have some convictions on your
12 record, they're too old and she doesn't plan to
13 introduce those. So you will not be cross-examined
14 on your record as far as credibility goes for those
15 charges. Do you understand?

16 MR. SHIVERS: Yes, ma'am.

17 THE COURT: All right. Now, do you
18 have any more questions that I can answer for you?

19 MR. SHIVERS: No, ma'am, that was it
20 right there.

21 THE COURT: Usually I would tell you
22 that -- I would ask you right now whether you
23 wanted to testify or not. But I'm not. I want you
24 to talk -- you've got three fine lawyers over
25 there. I want you to talk to your lawyers, decide,

1 think about it. I might read this to you again on
2 Monday. But I just wanted to give you the weekend
3 to think about the consequences of testifying or
4 not testifying. Okay?

5 MR. SHIVERS: Yes, ma'am. Thank you so
6 much. I appreciate it.

7 THE COURT: You're welcome. All right.
8 Anything else, Mr. Swerling? You can sit down, Mr.
9 Shivers.

10 Oh, I do have one thing just for the
11 record. Because I know on and off and I think I've
12 already put this on the record once, Bethanie, but
13 I know when the State is introducing evidence, I
14 always ask the Defense whether they have an
15 objection and he states not any further objection
16 from what he's already made.

17 So just to make sure that the Defense
18 is protected, I'm going to put this on the record
19 one more time. And this is to include all the
20 objections and I can tell you, it covers a good
21 portion of the evidence in this case. Because the
22 Defendant made a motion to suppress, I heard this
23 motion I believe it was on Tuesday -- Monday and
24 Tuesday. They made a motion to suppress the search
25 of the home. Basically they say that it was a

1 warrantless entry into the home; therefore,
2 everything else is contaminated in the fruit of the
3 poisonous tree.

4 This Court held and denied that motion
5 and found that under the welfare check and exigent
6 circumstances, the seizure -- well, the search of
7 the home first was a protective sweep and then the
8 State went and got a warrant. They searched the
9 house. I found that all of that was absolutely
10 reasonable and admissible in this case.

11 I think there was the objection to the
12 Defendant's statement, I'm trying to think because
13 I believe the guns came in through the statement or
14 the mention of the two weapons. This Court also
15 ruled that it was admissible, that it was voluntary
16 or at least I found it to be voluntary for
17 admissibility purposes. I found that it was not a
18 joint venture between the United States and Canada.
19 And that he wasn't being interrogated. So there's
20 any evidence that was introduced, the Defense is
21 protected on that.

22 The last thing I saw, Mr. Swerling,
23 and, again, I think it's kind of redundant. But in
24 your motion it also included the search of the
25 vehicle and finding the two guns. Again, they

1 | didn't place evidence in the guns. I let the
2 | statement in. Again, I just told you I thought it
3 | was voluntary. The gun incident, so I let it in.
4 | It went with the statement which corroborated his
5 | statement of what they found in the vehicle. So I
6 | let all of that in.

7 | With all that said, and I think earlier
8 | if anybody looks at the record, I think I put my
9 | rulings plain and clear. But any objection to any
10 | of the evidence that was found in the home, I just
11 | wanted to -- if anybody reads this record and it
12 | says, well, we agree to -- we have no objection
13 | except for what we stated. Matter of fact, I even
14 | wrote on my exhibit sheet that all evidence
15 | introduced into evidence from the home is subject
16 | to the Defendant's objection of the search of the
17 | home. And I wrote it all on my exhibit sheet.

18 | But for the record, the Defense is
19 | protected for every objection that they stated and
20 | for the reasons that I just stated to cover those
21 | three motions. How's that, Mr. Swerling? Does
22 | that cover everything?

23 | MR. SWERLING: I couldn't have done it
24 | better myself.

25 | THE COURT: Okay.

25 So with that said, I think I've covered

1 everything.

2 MR. SWERLING: I think so too, Judge.

3 THE COURT: All right. Anything else
4 from the State?

5 MS. MAYES: Nothing from the State,
6 Your Honor.

7 THE COURT: Anything from the Defense?

8 MS. BARBIER: Just briefly, Your Honor.
9 Could the State give us an idea of the remaining
10 witnesses? I know we have the pathologist and who
11 else we have just for scheduling purposes for next
12 week. You know, I know we all have things planned.

13 THE COURT: Right.

14 MS. MAYES: We predict we have two
15 hours to three hours worth of witnesses left if
16 that helps for scheduling. We're still working on
17 exactly what our final witness list will be.

18 THE COURT: Okay. So let's start at
19 11:15 and then we'll -- at least the State will
20 hopefully rest on Monday. If this case is going to
21 go into Tuesday, I'm going to need to know just so
22 I can let my lawyers in the next case know. I hate
23 to bring in a jury and I not have enough time to
24 try that case also. That will lead me into another
25 week which is going to put me behind. It will take

1 me three weeks to catch up.

2 MS. MAYES: Our expectation would be
3 two hours, Your Honor, no more than three.

4 THE COURT: Okay. And if y'all have
5 witnesses, you think you could finish by then or
6 Monday afternoon? Well, we're starting Monday
7 afternoon. At least Monday, worst scenario, I
8 could also do closings and charge on Tuesday
9 morning and start my other trial while the jury's
10 deliberating.

11 MR. SWERLING: Judge, I don't know yet
12 whether or not --

13 THE COURT: Right. Right. I
14 understand.

15 MR. SWERLING: That's the problem.

16 THE COURT: Sure. I gotcha. All
17 right. Well, we'll just, you know, we'll work it
18 out. So everybody have a good weekend and thank
19 you.

20 MS. MAYES: Thank you, Your Honor.

21 MS. BARBIER: Thank you, Judge.

22 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -

23

24

25

1 State of South Carolina) Court of General Sessions
2 County of Lexington) Eleventh Judicial Circuit
3
4 State of South Carolina,) Transcript of Record
5 vs.) 2020-GS-32-2419A
6 Vincent Thomas Shivers,) 2020-GS-32-2422A
7 _____ Defendant._____))

8

9

March 28, 2022

10

Lexington, South Carolina

11

12 B E F O R E:

13 The Honorable Debra R. McCaslin, Judge

14

15 A P P E A R A N C E S:

16 L. Suzanne Mayes, Deputy Solicitor
17 LeAnna S. McMenamin, Assistant Solicitor

18 On behalf of the State of South Carolina

19 Jack B. Swerling, Esquire
20 Deborah B. Barbier, Esquire
21 Alissa L. Wilson, Esquire

22 On behalf of the Defendant

23

Reported by: Tara Scott,
Circuit Court Reporter

24

Transcribed by: Stacy S. Johnson,
Circuit Court Reporter

25

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1 (The following proceedings were held March 28, 2022,
2 beginning at 11:40 AM.)

3 THE COURT: Ms. Barbier?

4 MS. BARBIER: I'm sorry, I didn't -- I didn't hear
5 that.

6 THE COURT: They've got a forensic mannequin that
7 they want to move in.

8 MS. MAYES: At this time so that we're not moving
9 it in when the jury's here. We're ready to --

10 MS. BARBIER: Oh, okay. So you want to use it as
11 demonstrative evidence?

12 MS. MAYES: Right. It's demonstrative.

13 MS. BARBIER: And you're not gonna try to put it in
14 evidence?

15 MS. MAYES: Right. Correct.

16 MS. BARBIER: Okay. That's no -- that's -- no
17 objection to that. No, ma'am.

18 THE COURT: Okay. Let's go ahead and get it in
19 before I bring the jury in.

20 THE COURT REPORTER: We'll make it a Court exhibit,
21 I'm assuming?

22 THE COURT: Yes, it will be a Court's exhibit.

23 THE COURT REPORTER: She left me -- she left me the
24 original, so I'm gonna make it --

25 THE COURT: I've got Number 7 open.

1 Clerk of Court.)

2 THE CLERK: If you'll have a seat over there,
3 please.

4 State your name and spell your last, please, for
5 the record.

6 THE WITNESS: Yes, my name is Dr. Thomas Beaver,
7 B-E-A-V-E-R.

8 THOMAS BEAVER,
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. MAYES:

12 Q. Good morning, Dr. Beaver.

13 First, can you give us some information about
14 yourself? Where are you currently employed and what
15 type of work do you do?

16 A. I'm employed by the Medical University of South
17 Carolina at the Charleston campus and I am a forensic
18 pathologist. I teach at the university, so I teach
19 medical students. Second year medical students most of
20 them. I also teach third and fourth year medical students
21 and I teach residents in pathology and I also do autopsies.
22 The university provides autopsy service to over half the
23 coroners in the state of South Carolina.

24 Q. So, Dr. Beaver, first, if you could just adjust the
25 microphone and pull it up a little bit --

1 MS. MAYES: And, Your Honor, if I may approach?

2 THE COURT: You may.

3 MS. MAYES: I'm just gonna move it over a little
4 bit this way and then a little bit closer to you.

5 THE WITNESS: That's better.

6 BY MS. MAYES:

7 Q. All right. What is meant by the study of forensic
8 pathology, Doctor?

9 A. So a forensic pathologist is a physician who's been
10 specifically trained to determine the cause, manner and
11 mechanism of death in cases of sudden and unexpected death.

12 Q. Can you tell us whether the study of forensic
13 pathology also includes the study of bullet flight path or
14 ballistics?

15 A. Yes, ma'am. That's part of the training.

16 Q. All right. And can you tell us whether you have
17 previously testified as an expert in the courts of this
18 state in the field of forensic pathology?

19 A. Yes, ma'am, I have.

20 Q. And can you tell us -- do you have an estimation as to
21 how many such times?

22 A. In this state, I just arrived here in 2018 and there's
23 been COVID, so I've only testified three times in the state
24 of South Carolina.

25 Q. And what about during your prior work?

1 A. Hundreds of times.

2 Q. Okay. All right. Can you tell us, Dr. Beaver,
3 whether that includes testimony regarding gunshot wounds?

4 A. Yes, ma'am.

5 Q. And the trajectory or flight path of -- of projectiles
6 that resulted in the gunshot wounds?

7 A. Yes, ma'am.

8 Q. Okay.

9 MS. MAYES: Your Honor, at this time the State
10 offers Dr. Thomas Beaver as an expert in the field of
11 forensic pathology.

12 THE COURT: Any objection?

13 MR. SWERLING: No, Your Honor.

14 THE COURT: All right. Let me tell the jury.

15 Dr. Beaver is gonna be qualified as a forensic
16 pathologist. He's gonna give his opinion in this case.
17 That does not mean that you must accept the opinion, but
18 it is evidence for you to use in any way you see fit.

19 Go ahead.

20 BY MS. MAYES:

21 Q. Now I want to start by asking you how you became
22 involved in this case, Doctor? Who performed the autopsy
23 on the victim in this case, Roselyn Cedeno?

24 A. I performed the autopsy in this case.

25 Q. And what date was the autopsy performed?

1 A. It was on the 8th of September and, I believe, it's
2 20 -- I'll look at my report here. Yeah, 2019. And I
3 believe that was either a Saturday or a Sunday if my
4 recollection is correct.

5 Q. All right. Now, Doctor, what was the age of Roselyn
6 Cedeno?

7 A. Forty-five.

8 Q. And I'm gonna ask you during the course of your
9 autopsy were you able to determine a cause of death?

10 A. Yes, ma'am.

11 Q. And what was the cause of death?

12 A. So I made the cause of death multiple gunshots wounds.

13 Q. And were you able to determine a manner of death?

14 A. Yes, ma'am.

15 Q. And what was that?

16 A. I made the manner of death homicide.

17 Q. And when you're looking at a body during the course of
18 the autopsy, take us through how you first approach it and
19 what the steps are along the way in the process.

20 A. Sure. So the first step is an external examination.
21 The bodies arrive to us in a body bag and the body bag is
22 sealed with a -- a seal that goes through the zipper and we
23 have -- we break that seal and we record that. We take
24 pictures every step of the way. So in this day of digital
25 photography, we can take pictures of every single step,

1 and we do. So a lot of pictures were taken. We take a
2 picture of the seal, we open the bag, we remove the body
3 from the bag onto our table for exam. The body still has
4 clothing in place. It's just like it came from the scene.
5 We take the clothing off. We collect trace evidence,
6 fingernail scrapings or clippings, head hair, any kind of
7 trace materials we might find on the body that might be
8 evidentiary in value. And then we start an examination
9 from the head to the foot.

10 At this point we'll usually look at just the -- for
11 the external exam, it's just a general description of the
12 body. How tall is she? How much does she weigh? What
13 color is the hair? You know, the overall -- so a reader
14 of the report or somebody who looks at our report would be
15 able to kind of get a mental image of what this person was
16 like. Tall, short, whatever.

17 Then we usually take radiographs, x-rays, and those
18 are used to find bullets. Bullets show up very well on
19 x-ray and we use them to see if there's any fragments or
20 projectiles that we should recover because sometimes it's
21 not always evident, they're buried in tissue, they buried
22 in bone, so we would need an x-ray to try to find them.
23 So we take x-rays.

24 Then we continue the exam, and we list all the
25 gunshot wounds, but even before that I go from the head

1 to the toe and I look for scars and identifying marks
2 and I'll document those. Then I'll go from head to toe
3 and I'll look for evidence of therapy. If there was a
4 breathing tube inserted, if the paramedics put a catheter
5 in or anything like that that's done to the body as a
6 resuscitative effort.

7 Then the final step, go from head to toe, and now I'm
8 looking for evidence of injury, and this is where I would
9 go through each of the gunshot wounds and I would mark it,
10 I would measure it, I would put a probe in to see which
11 direction it went. I do that very carefully so as not to
12 alter the direction of the bullet or anything the bullet
13 might have done internally.

14 Then -- and the dissection starts. So we make a
15 Y-shaped incision on the chest and abdomen, we carry it
16 down through the musculature basically giving us access
17 to all the body cavities. And now the organs are removed
18 sequentially. We dissect them all out in a pre -- it's
19 like a predetermined sequence so that we can look at
20 certain organs and systems of organs in a sequential way.

21 So once all the organs are removed, they're weighed,
22 they're biopsied. Photographs are taken each step of the
23 way. Then we also collect blood for toxicology and we
24 collect urine for toxicology and bile and we'll collect
25 the fluid from the eye, the vitreous fluid, for toxicology

1 as well.

2 Then we open the head. An incision is made behind
3 the ears. The scalp is reflected. A bone saw is used to
4 cut the skull. We remove the brain. Dissect and examine
5 the brain.

6 MR. SWERLING: Judge, I have to object. I don't
7 know that we need to go into that kind of detail that's
8 not -- if it's not related to the gunshot wounds. 403.

9 THE COURT: Let me --

10 MS. MAYES: I -- I can follow -- follow up more.

11 THE COURT: Thank you, Ms. Mayes.

12 BY MS. MAYES:

13 Q. Is there an effort to also visually examine the body?
14 I know you mentioned x-rays, but also visually examine the
15 body for any projectiles that may be present?

16 A. Yes, ma'am.

17 Q. All right. So I want to ask you, were you able to
18 recover any projectiles or a bullet from the body of
19 Roselyn Cedenno?

20 A. No.

21 Q. Do you have with you, Doctor, a notation as to her
22 clothing, how she arrived for autopsy?

23 A. Yes, ma'am.

24 Q. I'm gonna ask you to refer to that document.

25 What do your notes indicate, Doctor, as to how she

1 arrived to autopsy?

2 A. So she came to us fully clad and she has a shirt on,
3 a black short-sleeve shirt, and that had defects in the
4 shirt --

5 Q. Okay.

6 A. -- and those defects line up with some of the wounds
7 that were seen on the body.

8 Q. All right. What else?

9 A. None of the -- the projectiles that were recovered
10 from her clothing were recovered at the scene, so I was
11 told that they were -- they came from the floor and
12 underneath the body.

13 Q. All right. What other clothing items did you note to
14 be on her person?

15 A. We recovered her pants and I believe she had some
16 underpants as well and --

17 Q. Okay. Do you want to -- do you want to check your
18 notes?

19 A. Sure. Sure.

20 Q. And do you actually detail these items as you go
21 during the course of an autopsy?

22 A. Sure.

23 Q. Okay.

24 A. We -- I detail it as I go. So she also had brown
25 paper bags on her hands, which is a normal thing to do.

1 Q. Okay.

2 A. She has a black short-sleeve T-shirt, which has
3 multiple defects present. She has two light colored
4 undershirts. We photographed the clothing. She had on
5 drawstring black sweatpants. No defects in the sweatpants.
6 And that's -- that's pretty much it.

7 Q. All right. And --

8 A. That's what I have in my report.

9 Q. All right. And then do you have with you the -- in
10 your folder, do you have with you the property items?

11 A. Yes, I do.

12 Q. Okay.

13 A. It takes me a minute here.

14 Q. Sure. Take your time.

15 A. Yes. The property items, the paper bags, the
16 clothing. We recovered some scalp hair and we got nail
17 clippings and --

18 Q. Can I ask you whether or not she had on underwear?

19 A. No.

20 Q. Do you have a note as to the property items?

21 A. Yes, and I do not see underpants here.

22 Q. Okay.

23 A. I see black T-shirt, white tank top, black sweatpants
24 -- oh, white panties, yes. I guess that's underwear.
25 Sorry.

1 Q. That's okay.

2 All right. And you had labeled them as white panties?

3 A. Yes.

4 Q. All right. And then did she have on socks?

5 A. No.

6 Q. Okay. So no socks. Underwear. A black shirt. And
7 you said that there was a white shirt underneath that as
8 well?

9 A. Yes.

10 Q. And then black pants that you described as having a
11 drawstring? Sweatpants?

12 A. Yes.

13 Q. All right. And you said no projectiles recovered from
14 the body?

15 A. Correct.

16 Q. Now, Doctor, do you have a way in the field of
17 forensic pathology to estimate a time of death?

18 A. Yes.

19 Q. Tell us a little bit about that and what factors may
20 be considered in that process.

21 A. So --

22 Q. If you could speak up a little bit more.

23 A. Yes. So we can look at some of the processes that go
24 on once a person dies, and it's all part of decomposition,
25 but it helps us. First of all, is rigor mortis. So the

1 body joints get stiff. It's a chemical reaction that takes
2 place in the muscle, so the muscles become stiff and then
3 you can't bend the joints, so we call it rigor mortis. It
4 takes about twelve hours to develop. It will persist for
5 about seventy-two hours and then it dissipates.

6 The second process is what we call livor mortis and
7 livor mortis is the pooling of the blood in the postmortem
8 interval. So once the blood pressure stops, goes to zero,
9 gravity acts on the blood that's in the blood vessels and
10 in the body and it pulls the blood down. So if someone's
11 laying on their back, the blood will pool to the back of
12 the body and it will turn the skin a purplish color so,
13 hence, the term livor -- livor mortis.

14 And then there is the cooling of the body, which is
15 called algor mortis, and we don't really do much with that
16 anymore because it's just too inaccurate to -- to any
17 predictions.

18 Then, as the process of decomposition progresses,
19 there will be this -- there will skin slippage. The skin
20 will blister up and will make just like little blisters.
21 They look like any other blister you might get on the skin
22 and the skin will slough off, but it will happen to all the
23 skin on the body. And then the rest of the decomposition
24 process continues.

25 Q. All right. So when we talk about rigor mortis, I

1 believe you said the timeframe for that is at least twelve
2 up to how long?

3 A. Seventy-two hours.

4 Q. And for what you term livor mortis, that time frame?

5 A. Usually it's perceptible within about six hours after
6 death and then it will persist until the skin slips off,
7 which is about -- well, skin slippage starts at about
8 thirty-six hours, but it may take lots long. So it could
9 -- it could persist days.

10 Q. Okay.

11 A. It becomes fixed, it won't move, after about, oh, I
12 would say eighteen to twenty hours.

13 Q. All right. Now in regard to Roselyn Ceden, is
14 part of your initial work at autopsy to gather certain
15 background and history on the patient?

16 A. Yes, ma'am.

17 Q. And can you tell us whether in the course of your
18 review of this case you've had an opportunity to look at
19 crime scene photos that were taken of Roselyn back on
20 September 3rd?

21 A. Yes, ma'am.

22 Q. And so understanding that you were looking at crime
23 scene photographs taken on Dec -- I'm sorry, September 3,
24 2019, can you tell us whether or not you saw evidence that
25 rigor mortis was present?

1 A. Yes, ma'am. Rigor was present.

2 Q. Can you tell us whether or not you saw evidence that
3 livor mortis was also present?

4 A. Livor mortis was present.

5 Q. Can you tell us whether looking at the crime scene
6 photos from September 3rd, there was any evidence of skin
7 slippage?

8 A. Yes, she had a little bit of skin slippage around the
9 abdomen.

10 Q. And, again, the skin slippage is significant for what
11 reason?

12 A. It takes a lot longer to develop than livor or rigor,
13 which are processes that start as soon as the person is
14 dead. Skin slippage, other things have to happen. Some
15 bacteria, shift of fluids. There's a lot to that process,
16 so it takes longer.

17 Q. All right.

18 A. So I wouldn't expect to see skin slippage until much
19 later after death.

20 Q. All right. Now looking at your report, Doctor, I'm
21 gonna refer you down to the case history.

22 A. Yes, ma'am.

23 Q. As part of the underlying data that you relied on in
24 this case, did you have information that Ms. Ceden0 was
25 last known to be alive on September 1st of 2019?

1 A. Yes, ma'am. September 1, 2019, is what I say.

2 Q. I'm gonna show you what is a calendar and this is
3 State's 159 in evidence. And, Doctor, in the photograph
4 that you reviewed of -- of Roselyn would have been from
5 September 3rd. The presence of rigor mortis, liver mortis
6 -- livor mortis and skin slippage that you have described,
7 can you tell us whether or not the timeframe of death for
8 Roselyn Cedenó would include the evening or night of
9 September 1st?

10 A. Yes, ma'am.

11 MR. SWERLING: I object, Your Honor. I think they
12 have to lay a better foundation than that to make that
13 kind of opinion -- or render that kind of opinion.

14 THE COURT: Can you lay a foundation, Ms. Mayes?

15 MS. MAYES: Yes, Your Honor. And -- and I --
16 the State's position is that he has already laid a
17 significant foundation, but we will proceed with a
18 little more detail here.

19 BY MS. MAYES:

20 Q. Regarding rigor mortis, again, rigor mortis continues
21 on for how long, Doctor?

22 A. For about seventy-two hours. It takes about twelve
23 hours to develop fully and then it will persist for about
24 seventy-two hours before it dissipates.

25 Q. And livor mortis continues on for how long?

1 A. There -- it continues to be present and observable
2 until the skin actually starts to slip off because it's a
3 change in the skin. It could be a matter of -- I would
4 expect at least seventy-two hours, perhaps even longer.

5 Q. All right. And skin slippage, Doctor, at what stage
6 would you ordinarily expect for skin slippage to begin?

7 A. That would take -- I would -- I would say it could
8 begin as early as eighteen to twenty hours, but it usually
9 takes a little bit longer and it's -- all of these are
10 environmentally dependent. So if it's a hot environment,
11 it accelerates the process rather than a cool environment.
12 Also skin slippage depends a bit on humidity, so if it's
13 a cool, dry place it takes longer and so you -- you can
14 only offer an estimate, and I would estimate that I don't
15 usually expect to see skin slippage until at least days
16 after death. Two to three days, maybe four.

17 Q. Okay. And then, Doctor, as part of the materials
18 that you reviewed in this case, including photographs,
19 did you have information as to whether -- or did you have
20 knowledge as to whether Roselyn Cedeno's body was indoors
21 or outdoors?

22 A. The body was indoors.

23 Q. And is part of your work as forensic pathologist
24 considering all these factors for a potential estimation
25 of time of death?

1 A. Yes, and for movement of the body because livor
2 becomes fixed in the position the person is in. If you
3 move the body, then I can see the pattern of livor has
4 changed than from the position of the recovery of the body,
5 which makes -- makes -- I can tell that the body's been
6 moved. So, yeah, rigor and livor are important to us.

7 Q. All right. And can you tell us whether all of these
8 topics, including an estimation as to time of death, are
9 included in your field of forensic pathology?

10 A. Yes, ma'am. Forensic pathologists do this every
11 single autopsy.

12 Q. Okay. And now I'm gonna show you what is for ID only,
13 State's 236.

14 I'm gonna show you a photograph, which is 236 for
15 identification only, and ask you whether this photograph
16 is among materials that you reviewed in this case?

17 A. Yes, ma'am, it is.

18 Q. And regarding Roselyn Cedeno and your observation of
19 photographs from the crime scene on September 3rd, can you
20 tell us whether or not there was visible rigor mortis?

21 A. Rigor mortis was visible in the photographs.

22 Q. Can you tell us whether or not there was visible livor
23 mortis?

24 A. Livor mortis was present in the photographs as well.

25 Q. Can you tell us whether or not there were signs of

1 skin slippage?

2 A. There is skin slippage evidence in the photos from the
3 scene.

4 Q. All right. Based on all of those factors, Doctor,
5 are you able to give an estimation as to time of death for
6 Roselyn Cedenno?

7 A. I can give an interval, so I would say that it's
8 between twelve and seventy-two hours.

9 Q. All right. Twelve to seventy-two hours from when the
10 body was found and photographed?

11 A. Yes, ma'am.

12 Q. Can you tell us, Doctor, whether or not that includes
13 the evening of Sunday, September 1st?

14 A. It would.

15 Q. And the early morning hours of Monday, September 2nd?

16 A. Yes.

17 Q. Now you mentioned also that there were multiple
18 defects in the clothing or Roselyn Cedenno. I'm gonna show
19 you what is State's 232 and see if there were.

20 What are we looking at here, Doctor?

21 A. So this is the T-shirt that was on the body and we're
22 -- we've laid it out on a sheet and at the top is our
23 unique identifier for this case, so she is Case FA19-766,
24 and that appears in all our photographs. And then you can
25 see through this -- through the fabric of the shirt you

1 can see the underlying sheet. We put these white things
2 underneath those just so you can see. Otherwise, you'd be
3 looking at -- it would just be all black because it would
4 be black fabric from the shirt underneath. So now you can
5 see the defects that we saw at the time of autopsy and if
6 you see the body there are wounds that correspond to these
7 defects. So -- so this -- and let me -- so this is the
8 top of the shirt. The collar is here, a sleeve is here, a
9 sleeve is here. This is the waist of the shirt. So in
10 this upper left part of the shirt there are these three
11 defects and then there are a couple of defects here and
12 one here and one here. So -- and these correspond -- there
13 are wounds in these areas as well.

14 Q. All right. And now, Doctor, State's 231.

15 A. So we take the front and back and so this is the back
16 of the shirt. The collar is here, sleeves are here, waist
17 of the shirt is here, and these are the defects that we see
18 on the back.

19 Clothing -- I caution to not use clothing too much to
20 know where the wounds are because the clothing -- the shirt
21 could stretch over here and it can -- clothing can be moved
22 around prior to the gunshots being inflicted, so they don't
23 necessarily go one over one, but you'll get -- the number
24 will be roughly the same.

25 Q. All right. Now in addition to photographing the

1 clothing, do you actually photograph the body?

2 A. Yes, ma'am.

3 Q. And does that include documentation as to each gunshot
4 wound?

5 A. Each one individually. There's hundreds of
6 photographs.

7 Q. Including points of entry?

8 A. Yes, ma'am.

9 Q. And points of exit?

10 A. Yes, ma'am.

11 Q. And do you also use during the course of the autopsy
12 any type of device or tool that helps you determine the
13 flight path of a bullet?

14 A. Yes, ma'am.

15 Q. Tell us about that.

16 A. So I have a metal probe that's a long -- it's just a
17 straight metal rod and I can place that into the wound and
18 I can kind of follow the way the rod drops into the wound.
19 So if you don't push too hard and you kind of just feel
20 your way, the rod will follow the path of the wound because
21 the bullet makes a hole that goes all the way through the
22 body, through organs even. So with a little bit of skill
23 and training, you can actually get an -- a pretty good idea
24 of the trajectory of the bullet by placing this rod.

25 Q. And did you use such a rod in the autopsy of Roselyn

1 Cedenno?

2 A. Yes, ma'am.

3 Q. And did you also document that by photograph?

4 A. Yes, ma'am.

5 Q. Doctor, in lieu of photographs today, were you
6 also able to create markings on a forensic mannequin to
7 demonstrate the location of the entry and exit wounds to
8 Roselyn Cedenno?

9 A. Yes, ma'am.

10 Q. And who actually prepared the exhibit?

11 A. I did.

12 Q. Okay.

13 A. We -- I think I -- you came to my office in Charleston
14 and you brought this, along with the rods, and we spent
15 some hours doing this.

16 Q. All right. Doctor, can you tell us whether or not the
17 rods and the placement of rods on the forensic mannequin,
18 which is State's 235 for demonstrative purposes, can you
19 tell us whether this accurately reflects the gunshot wounds
20 to Roselyn Cedenno?

21 A. Yes, ma'am.

22 Q. Including points of entry?

23 A. Yes, ma'am.

24 Q. And points of exit to the best of your knowledge?

25 A. Yes, ma'am.

1 Q. And the trajectory or flight path of each of these
2 bullets?

3 A. The trajectories, yes.

4 Q. Okay.

5 A. There's just one thing. The -- there were two graze
6 wounds on the forearm and we didn't really address those on
7 the mannequin --

8 Q. Okay.

9 A. -- but they were very superficial, just the skin, so
10 that we couldn't really put a probe through them in the --
11 in the mannequin.

12 Q. All right. And I'm gonna ask you to describe that
13 in more detail in just a few moments.

14 Can you tell us whether or not you also had
15 information as part of your case history regarding the
16 number of casings found at the crime scene?

17 A. Yes, ma'am.

18 Q. I'm gonna show you what is State's 58 for evidence.

19 A. Yes.

20 Q. And you can refer to your report and your case
21 history as well. How many casings did you understand to
22 be recovered from the crime scene, Doctor?

23 A. So I have reported the seven empty shell casings
24 recovered.

25 Q. Can you tell us whether or not the injuries you noted

1 on Roselyn Ceden0 include at least seven gunshot wounds?

2 A. Yes, ma'am.

3 Q. And can you tell us what is meant by a reentry wound?

4 A. A reentry wound is where a bullet exits at one point
5 in the body and then reenters the body at a different
6 location.

7 Q. And can you tell us what is meant by a graze wound?

8 A. So a graze wound is where a bullet doesn't technically
9 enter the body, but passes over the surface of the body
10 with disruption of the skin. So if there is no discrete
11 point of entry, we would call that a graze wound.

12 Q. Okay. Can you tell us whether with Roselyn Ceden0,
13 in addition to seven gunshot wounds, there was evidence of
14 graze wounding?

15 A. Yes, ma'am.

16 Q. Can you tell us whether, in addition to seven gunshot
17 wounds, there was evidence of at least one reentry wound?

18 A. Yes, ma'am.

19 Q. And can you show us from where you are sitting
20 possibly an example of a reentry wound and how that may
21 occur?

22 A. Okay. So if -- if the bullet passes through the chest
23 and the arm is here, the bullet exits the chest here, goes
24 into the arm here, this is a reentry wound on the arm,
25 and then it might exit the arm. Also the bullet could

1 exit out the front, it could hit the floor and ricochet
2 back into the body creating another defect, and that defect
3 might be superficial because the bullet might hit, disrupt
4 the skin, disrupt some of the musculature, but fall back
5 onto the floor. So what bullets do can sometimes be pretty
6 confounding.

7 Q. Okay. Doctor, I'm also gonna show you what is
8 State's 67. What are we observing in that particular
9 photograph?

10 A. So this is a photograph taken at the scene and it is
11 showing the side of her body, kind of the backside of her
12 body, and so the head is up here and the feet are down here
13 and this is the backside of her body, and there are two
14 deformed projectiles here. There's one right here and one
15 right there.

16 Q. All right. Now you also mentioned in her clothing,
17 in addition to the black pants and the black shirt, a
18 white camisole or undershirt. What, if anything, are we
19 observing in this photograph in relation to those
20 projectiles and the white undershirt?

21 A. So the white undershirt, I believe, is like -- is
22 this background here. It's hard to see in this photograph,
23 but it's this -- this is -- the blood is staining the
24 white shirt and I would suspect that the body was rolled
25 over here so that these projectiles were more underneath it

1 because you have to roll her over to see the projectiles.

2 Q. What, if anything, Doctor, is significant about the
3 presence of projectiles such as this inside the clothing?

4 A. So the -- there has to be something to stop the
5 bullet; otherwise, it will just keep going. So it's gone
6 through the body and -- and now it's trapped in the
7 clothing, so that means there's something on the other side
8 of the clothing that's stopping the bullet from penetrating
9 through or going any further than that.

10 Q. And in this particular case, Doctor, to have the
11 projectiles located here, what, if anything, does that
12 indicate to you?

13 A. So when the projectiles are under the body and the
14 body is on the floor, the floor is what stopped the
15 projectiles.

16 Q. Meaning what?

17 A. Meaning that she was on the floor, the bullets came
18 through from the back to the front, exit the front and get
19 trapped by the floor, trapped between her clothing and the
20 floor.

21 Q. Can you tell us whether or not that is consistent with
22 someone standing over the victim when the shots are fired?

23 A. Yes, ma'am. It's consistent.

24 Q. How so?

25 A. The -- the bullets come through from the back to the

1 front. They exit in the front. If she's facedown on the
2 floor, those bullets will then hit the floor and stop.

3 Q. And can you tell us how many gunshot wounds to the
4 back were noted for Roselyn Cedenno, how many entrance
5 wounds she had to her back?

6 A. There are at least three.

7 MS. MAYES: And, Your Honor, if he may step down,
8 we'd ask him to describe further his findings.

9 THE COURT: Doctor, you may step down.

10 THE WITNESS: So the --

11 BY MS. MAYES:

12 Q. And, actually, I'm gonna switch, if we can. That way
13 the court reporter can hear you and your voice will project
14 and if you can just keep your voice up loud enough for even
15 the last juror to hear you.

16 A. Okay. So for preparation of the mannequin, I tried
17 -- all of the -- at the autopsy, all of the wounds are
18 designated with a letter.

19 MR. SWERLING: Excuse me. Can I move over there?

20 THE COURT: You can.

21 And if at any time any of the jurors can't hear,
22 raise your hand so we'll know.

23 THE WITNESS: So the once the body has been
24 photographed and all cleaned up and x-rayed and the
25 final step is I have little stickers that are placed

1 on the body and I peel them off and I put the letter
2 on -- next to the wound and we photograph again.

3 So what you're seeing on the body here on this
4 mannequin are the letter designations for each wound.
5 There's no real pattern to them except that I usually
6 start up at the head and I move down, so the smaller
7 letters are here and the bigger letters are here, but
8 there might be some bigger ones on the back because we
9 do that after we do the front. We can only do one side
10 at a time.

11 So I -- once they get a letter, then we describe
12 them and photograph them. So I tried to put each of
13 those letters on this mannequin and then I tried to
14 connect the entrance and exit wounds with these probes.

15 Now these are wooden sticks and they have a point
16 on one end and they're flat on the other and so I'm
17 using the convention that this pointed end points in
18 the direction that the bullet's going. So -- so if
19 you look at one of these rods and the blunt end is here
20 and the pointed end is here, that means the bullet's
21 going this way, back to front.

22 So these two, this one here and this one here, are
23 two wounds on her back that come out on the front and
24 we saw defects in the clothing in this area and these
25 are the two that are associated with those defects.

1 Now we talked a bit about a reentry wound. This
2 is a wound on her arm here that we've got marked as G
3 and so if her arm is up here, you can see how we could
4 line G up with either of these two wounds.

5 Now, let's see, N. This wound here is this one
6 right here. So this goes straight through the chest.
7 Then there are -- then's there's C, which is actually
8 kind of on the back side of this chest, but it goes
9 through and comes out on the back.

10 These two wounds, the entrance is here on the
11 abdomen, goes through, comes out, does not hit any --
12 any vital organ or any major neurovascular structure
13 that would cause immediate death. I'll get back to
14 these in a minute.

15 This one here, it goes through the hip and out the
16 back, comes in here and comes out the back, and this one
17 is not hitting anything that's immediately fatal.

18 Now this one here goes through this breast and this
19 might also be one of those kind of reentry wounds from --
20 from a wound that -- where the bullet has ricocheted off
21 the floor and gone back through. It's hard to see three
22 dimensionally, but this mannequin is thin, so --

23 BY MS. MAYES:

24 Q. And, Doctor, when you speak of ricocheting off the
25 floor, is that consistent with the victim being down on the

1 floor when the shot is fired?

2 A. Correct, facedown. These -- J and K are very atypical
3 wounds, so it -- it would -- when the wound is irregular --
4 when the wound is small and round, the bullet's intact and
5 it's travelling in a spiral fashion, it's travelling
6 straight. Once the bullet has hit something, it's no
7 longer stable. It becomes -- it starts to tumble and it
8 makes the -- the wound on the skin irregular in shape.
9 It's not a round hole anymore, now it's this weird looking
10 thing because the bullet's kind of spinning as it goes
11 through the skin and tumbling, so these wounds are
12 irregular like that. So it's hard to say, but I'm thinking
13 these two might be some type of reentry and exits and then
14 the bullet's found.

15 So then this wound here goes through the right lung
16 and it misses the left lung and exits so -- but this wound
17 would be a fatal wound because the damage to the right lung
18 fills the chest with blood and she would bleed to death and
19 not be able to breathe, so this wound would be a fatal
20 wound.

21 This wound here, this one, is a fatal wound. It goes
22 through both lungs and would -- would be a fatal wound as
23 well. This one here goes through both lungs, the heart and
24 -- and a piece of the liver. The liver kind of sits here,
25 but the upper dome of it goes this high and this wound

1 actually gets through the upper part top of the liver.

2 Let's see. This wound would not be a fatal wound,
3 but all of these wounds not treated or treated improperly
4 would -- could be fatal ultimately from infection or some
5 complicating factor.

6 And then I think we have this one here coming in at
7 this side and coming out here and this wound goes through
8 the lung on the right side.

9 So, let's see. Did I catch them all? Any other
10 questions?

11 Q. Doctor, how many of these gunshot wounds struck the
12 heart?

13 A. Two struck the heart. This one here struck the heart
14 and this one here strikes the heart.

15 Q. And, Doctor, if we could, I'm going to rotate the
16 mannequin 180. And, with that, if you could demonstrate
17 to us which ones are known to be gunshot wounds to the
18 back.

19 A. So these are two pretty characteristic entrance wounds
20 right here. It's pretty easy to determine. This one, E,
21 is past the midline of what I would consider front and
22 back, so this one actually is also on the back. This is P
23 here coming out. I think this is a gunshot wound of exit.
24 And Q, I think, also is a gunshot wound of exit, so.

25 Q. So based on that, Doctor, are there at least two where

1 the entry wound was to the back of Roselyn Cedenos?

2 A. Yeah, there's two here and I believe E is also. B or
3 C probably would be more towards the back than the front.

4 Q. Thank you. You may return.

5 A. (Witness complies.)

6 Q. I'm gonna show you -- I think you're looking at 67
7 right now involving the clothing. I'm gonna show you now
8 what is 68, 65 and 209. And now I'm gonna show you 209
9 depicting carpet padding and 72 underneath the padding.

10 Doctor, you've given your opinion regarding the
11 projectiles located within the clothing. I'm gonna now
12 ask you about State's 68, projectiles found underneath the
13 victim, 209, the lifting of carpet padding, and then the
14 recovery in 72, a projectile therein.

15 A. So this one, the carpet padding's here and this is
16 the projectile. It's a little -- it's got a copper jacket
17 and it's kind of small in this picture, but that's the
18 projectile.

19 Q. Okay. Doctor, what, if anything, is significant about
20 projectiles being found underneath the carpet padding?

21 A. It's the final place of rest, so this is the bullet
22 from wherever it was fired ends up going down into the
23 carpet. So if the body -- if the person is on the ground
24 and the bullet goes through the body, then it's going to
25 end up in the carpet.

1 Q. What, if anything, does this indicate to you regarding
2 the position of the shooter?

3 A. So it would put the shooter somewhere over the body
4 where the downward trajectory would land the bullet in the
5 carpet.

6 Q. And can you tell us whether or not that is consistent
7 with the victim being down?

8 A. Yes, ma'am. Consistent.

9 Q. In addition to examining the gunshot wounds, can you
10 tell us whether or not you also examined the hands of the
11 victim?

12 A. Yes, ma'am.

13 Q. And do you look for any evidence of a fight or an
14 altercation?

15 A. Yes, ma'am.

16 Q. And did you see any evidence of abrasions or
17 lacerations to the hands of Roselyn Cedeno?

18 A. There were no injuries to the hands.

19 Q. Did you see any evidence whatsoever of a fight or an
20 altercation?

21 A. No.

22 Q. And I believe you also were the ones that -- or the
23 one that collected the fingernail clippings from the left
24 and right hand of Roselyn Cedeno?

25 A. Yes, ma'am.

1 Q. Can you tell us whether or not those items were sealed
2 by you prior to -- to delivery to Sergeant Nick Burt?

3 A. Yes, sealed and without -- and noted in our evidence
4 transfer process.

5 Q. What is meant, Doctor, by the terms "soot" or
6 "stippling" in connection with gunshot wounds?

7 A. It helps us with the range of fire. So besides the
8 bullet, there are other things that come out of the muzzle
9 of a gun. One of them is smoke, soot, and another are
10 unburned power granules, which if they impact the body
11 will result in a stippling pattern, sometimes called powder
12 tattooing, but it's not really a tattoo, so it's more like
13 stippling is the better term.

14 Q. Did you see any evidence of soot or stippling to the
15 body of Roselyn Cedeno?

16 A. No, ma'am.

17 Q. What, if anything, does that indicate to you about the
18 distance between the shooter and the victim?

19 A. The powder granules are not very heavy and they're not
20 very aerodynamic, so they don't travel very far, and the
21 soot also doesn't travel very far and it dissipates into
22 the air so it doesn't get deposited on a surface, so the
23 range of fire needs to be maybe two feet or so to not get
24 any stippling. Also, an intervening target can stop the
25 powder granules or soot.

1 Q. Okay. Can you tell us whether or not that would also
2 be consistent with someone standing over the victim who is
3 down?

4 A. Yes.

5 Q. You mentioned graze wounds to Roselyn Ceden. Doctor,
6 can you show us where on her body you observed these graze
7 wounds?

8 A. Yes. So the first one is on the right forearm and
9 the second one is at the left wrist. I think I marked it
10 on that one when we started it and then I decided that I
11 -- that really a -- the graze wounds weren't gonna be too
12 relevant, so. But she has -- the other one is on the
13 right forearm. It's fourteen inches from the top of the
14 shoulder.

15 Q. Okay. And from where you are seated, can you observe
16 this here to the right forearm?

17 A. Yes.

18 Q. Okay. And can you tell us whether or not that was
19 your marking in reference to that graze wound?

20 A. Yes.

21 Q. And then also on the left hand in the wrist area, can
22 you tell us what, if anything, we are looking at here with
23 this marking?

24 A. That's a black mark that we put on there. I put that
25 there because -- when we were talking about the graze

1 wounds.

2 Q. Doctor, looking at the constellation of injuries to
3 Roselyn Ceden0 with at least seven gunshot wounds, are you
4 able to determine how many of those gunshot wounds would
5 have been fatal within minutes?

6 A. I think there are three. Two to three. The other
7 ones, it's hard to say how long it might have taken.

8 Q. Does that include the gunshot wounds to the heart?

9 A. Yes.

10 MS. MAYES: I beg the Court's indulgence.

11 THE COURT: Take your time.

12 BY MS. MAYES:

13 Q. Looking here, Doctor, at State's 58, being a crime
14 scene photograph, as well as State's 67, which involves
15 clothing, can you tell us whether or not this floor
16 depicted in State's 58 would be a sufficient barrier to
17 stop these bullets from travelling further?

18 A. Yes, it did so.

19 Q. In your opinion, that's what occurred?

20 A. Yes.

21 MS. MAYES: Thank you. Nothing further.

22 THE COURT: Mr. Swerling.

23 CROSS-EXAMINATION

24 BY MR. SWERLING:

25 Q. Good morning, Doctor.

1 A. Good morning.

2 Q. My name is Jack Swerling. I'm gonna ask you a few
3 questions in followup on what Ms. Mayes asked you.

4 First of all, what I get from your testimony is that
5 there were no defensive wounds on Ms. Cedenno, correct?

6 A. Correct.

7 Q. Okay. So and your conclusion toward the end of your
8 testimony was that she was not involved in a fight or an
9 altercation with anybody?

10 A. There was no evidence of any.

11 Q. No evidence of that.

12 Okay. So what -- the injuries to her are gunshot
13 wounds without any indication that there was something that
14 preceded that like a fight or an argument; is that correct?

15 A. Correct.

16 Q. And I believe you said that it would be -- in order to
17 not to have soot or stippling you'd be at least three feet
18 away? Two to three feet away?

19 A. Something like that.

20 Q. Something in that area.

21 Okay. And none of these wounds had soot or stippling
22 on them; is that correct?

23 A. That's correct.

24 Q. Now let me go back. The -- so at some point whoever
25 was doing the shooting would have been behind Ms. Cedenno

1 and at some point in front of Ms. Ceden? I'm trying to --
2 I'd like to understand that.

3 A. Sure. I think there are an infinite number of
4 hypotheticals that you could construct with her in a
5 position relative to the shooter and I can't speak to
6 those. All I can show you is where I think the entrance
7 wounds are, where the exit wounds are and what the
8 trajectory of the bullet through the body is and then
9 we'll make an assumption that the bullets for the most
10 part travel in a straight line and -- and that's all I can
11 do. I would say there are some wounds of entrance from
12 behind the body and some wounds of entrance on the front
13 of the body, so. But she could turn, she could twist, she
14 could bend over. The body can move in a lot of different
15 planes that would allow the bullets to enter in different
16 places. The only thing that I know for sure is that there
17 are bullets underneath her and they're in a location
18 corresponding to some exit wounds and the entrance wounds
19 for those exit wounds are on her back. So for those two
20 wounds, I can pretty much put the body in a position
21 because I know where the bullets ended up and I know where
22 the -- where the entrance is, so I can place her for those
23 two wounds. All the other wounds I can't really say.

24 Q. You really can't. So what you're saying is the two
25 shots that went in front, exited the back, those you can

1 tell? Is that what I understood you to say?

2 A. The two that exited in the back --

3 Q. Yeah.

4 A. -- and then -- or, excuse me, not exited. You said
5 exited --

6 Q. Right.

7 A. -- but I meant entrance. So the two that entered in
8 the back and exited in the front and ended up under the
9 body in front, those I can say -- I can place the body in
10 a position and I can place the gun relative to that, but
11 the other wounds she could raise her arm, she could twist
12 and turn, she could bend over. I can't really say.

13 Q. So those two shots were in the back and they exited
14 the front?

15 A. Correct.

16 Q. Went to the front?

17 A. Correct.

18 Q. Okay.

19 All right. Now the -- so you really can't draw any
20 conclusion as to whether or not Ms. Ceden0 was facing the
21 person who was doing the shooting or was -- her back was
22 turned toward the person who did the shooting? It would
23 be too many variations there?

24 A. For the two wounds I mentioned --

25 Q. Those two, yeah. Excluding those two. I understand

1 what you're saying.

2 A. Excluding those two, then, yes. I agree, yes.

3 Q. All right. Now you had talked about rigor and livor
4 -- I guess it's rigor mortis. I -- I always said "rigger",
5 but rigor mortis and livor mortis and the -- the skin,
6 those are all basically estimates as to when rigor mortis
7 sets in or livor mortis sets in or the skin slip; is that
8 correct?

9 A. Absolutely. Yes.

10 Q. Okay. And so it's not -- it's not an exact science,
11 they are estimates between one interval and another
12 interval; is that correct?

13 A. Correct.

14 Q. So from that alone, you cannot make a determination
15 as to the time of death?

16 A. Correct.

17 Q. And I believe you said that a lot of it would depend
18 upon environmental factors as well with respect to those
19 three conditions?

20 A. Yes, sir.

21 Q. Okay. Now is there any difference between a full
22 metal jacket bullet and a high-powered hollow point -- or
23 a hollow point bullet? That's what I meant to say.

24 A. Yes, sir.

25 Q. How -- how are they trans -- how are they different

1 and -- and how do they affect the body?

2 A. Sure. A full metal jacket bullet has a copper
3 jacket over the lead core. Well, it might not be copper,
4 it might be an alloy of copper, but it looks like copper,
5 and it's designed to keep the bullet intact and -- because
6 lead is soft and malleable and will come apart, so the
7 jacket keeps the bullet intact. So full metal jacket
8 bullets will travel -- might travel through the body, might
9 travel through a wall, might -- and they'll go through
10 things very easily. They're designed to go that way.
11 That's what the jacket is for.

12 A hollow point bullet, there's -- the jacket only
13 covers part of the bullet and usually the nose of the
14 bullet is left exposed and may even be altered in various
15 ways to allow the bullet to expand into more of a mushroom
16 shape. So the nose of the bullet as it hits something,
17 instead of being supported by the jacket, the lead just
18 gets pushed back and -- and deformed. So the theory with
19 that is that the bullet doesn't go entirely through the
20 target and it stops inside because the bullet's now got a
21 larger frontal area and it will hit things and stop and so
22 it's to keep the bullet from exiting.

23 Some -- there's a lot of mythology around gunshots and
24 some of the mythology is that hollow point bullets do more
25 damage, which is really not the case. So that's pretty

1 much it. The purpose of a hollow point bullet is so that
2 it doesn't exit the body to go through a wall and hit some
3 target that you're not intending to hit.

4 Q. So from what you just described, you would not -- your
5 opinion would not be that these are hollow point bullets?

6 A. I -- I don't know what the bullets are.

7 Q. You don't. And you cannot make a judgment about that?

8 A. No, not unless you show me the bullets or some
9 pictures of them.

10 Q. Okay. Now a couple of other questions. You did some
11 toxicology in the case; is that correct?

12 A. Yes, sir.

13 Q. And would you tell the jury was there a significant
14 level of marijuana in the body?

15 A. Let me -- can I refer to my report?

16 Q. Sure.

17 A. I have -- I have the numbers, if you'd like?

18 Q. Yes.

19 A. So toxicology shows ethanol, which would be alcohol
20 from drinks, .047. So legal limit's .08 for reference.

21 Q. That's well below the legal limit?

22 A. Well below. And that she has tetrahydrocannabinol
23 of 11 nanograms per milliliter. So tetrahydrocannabinol
24 is cannabis, marijuana, and 11 is a pretty small number.
25 She has 11 -- carboxy tetrahydrocannabinol of 24

1 nanograms. The carboxy part of that means that the
2 tetrahydrocannabinol is not psychoactive, so the 24
3 nanograms, even though it's a larger number, it's not
4 gonna be active in any way. It's an inactive metabolite.
5 So she has 11 nanograms of THC. Generally for these kinds
6 of cases -- we haven't always measured that and it's only
7 been recently that we started to even get a number, but
8 that's -- usually I see them in the 30, 40 range, so 11 is,
9 I think, small -- on a smallish side.

10 Q. Okay. All right. And that's been your -- that's your
11 experience with that?

12 A. That's my experience. And the significance to that?
13 You said -- I think you used the word "significant", so
14 now I'm thinking, okay, is this causing her death because
15 that's significant, but this is not going to cause her
16 death.

17 Q. Okay. All right. Now you did an autopsy report in
18 the case; is that correct?

19 A. Yes, sir, I did.

20 Q. And I believe that the report was signed by you on
21 it looks like -- I'm sorry -- October 17, 2019; is that
22 correct?

23 A. Yes.

24 Q. And that basically is a written report of everything
25 you -- pretty much everything you testified to today?

1 A. Correct.

2 Q. Okay. At the top portion of that report, which was
3 done on that date, you have the date and time of the
4 autopsy was September 8, 2019, correct?

5 A. Yes, sir.

6 Q. Okay. And you had the date and time of death not --
7 well, you had it basically on September 2, 2019, at 10 AM.
8 That's what's written?

9 A. Yes, sir. That is information provided to us by the
10 coroner and it gets entered into the computer when the case
11 is in-take'd into our system. And it's not entered by me,
12 it's entered by the clerical staff that in-takes the case
13 into our system and they go off of a sheet -- a form that
14 the coroner fills out. So that was information provided to
15 us.

16 Q. So the coroner determined that the time of death was
17 at 10 AM on September 2nd?

18 A. Yes, sir.

19 Q. Okay.

20 A. And if you look --

21 Q. And you signed the report, which has that on there;
22 isn't that true?

23 A. The things that I'm signing to are below that. So,
24 no, I --

25 Q. Does that say that here? I'm sorry. Does that say

1 that here that you're only signing as to the -- what's
2 below that line?

3 A. No, sir.

4 Q. Okay. So if I were to pick up this autopsy report
5 and look at the entire report, it would have -- or it would
6 tell me that you signed it on October 17, 2019, and you had
7 -- you signed a report that had date and time of death as
8 September 2, 2019, at 10:00? That's what I would look --
9 that's what I would see, correct?

10 A. And I would hope that you would read the rest of the
11 report and I'd hope that you would see four or five lines
12 down that it says date of injury and I put see coroner's
13 report and it says time, see coroner's report. So I'm --

14 Q. Okay.

15 A. -- I'm not making the time of death or the date of
16 death.

17 Q. You'd disagree with it?

18 A. I -- I don't determine that. It's not for me to --

19 Q. Well, you did for Ms. Mayes just a few minutes ago.
20 You gave her a window as to that it would include
21 September 1st, and according to this report it would not
22 include September 1st, it would have been September 2,
23 2019, at 10:00.

24 I wouldn't sign anything unless I was sure of what I
25 was signing. I mean, you're a doctor and you know that

1 this is a medical record.

2 MS. MAYES: Your Honor, I would just ask that that
3 be in the form of a question.

4 MR. SWERLING: It is. You're a doctor.
5 Why would you sign anything that is not accurate?

6 THE COURT: I think that's a question.

7 THE WITNESS: That part of the report doesn't
8 appear on the screen that I sign. This is an electronic
9 document and I don't see that part of the screen.

10 BY MR. SWERLING:

11 Q. So you're saying you didn't read the report?

12 A. I read the report, but I told you that's part of the
13 screen -- the part of the screen you're referring to, the
14 top portion, doesn't appear on the screen that I read when
15 I electronically sign this out.

16 Q. Sir, that's what I'm saying. You signed something
17 that you didn't read that says September 2, 2019?

18 A. Well, they include that in this printout, but that's
19 not part of what I get to sign. It's not on the screen
20 where I get to sign, so I can't see it. I don't see it.
21 I did not see that because it's not on the screen where I
22 sign.

23 Q. All right. Let me ask you something. This is the
24 report, correct?

25 A. Yes.

1 Q. Is there anything on this report that would indicate
2 what you're telling us now that would clarify that?

3 A. I don't understand the question.

4 Q. Is there anything on this report that would clarify
5 your position right now that you didn't sign the report
6 which indicated that the time of death -- date and time of
7 death was September 2, 2019?

8 I -- I believe -- let me just show it to you.

9 A. I -- I see it. I see what you're --

10 Q. See if it refreshes your memory.

11 A. -- trying to say, but it's -- it's a clerical error
12 and an error on my part for not catching it. How's that?

13 Q. Did you ever -- I mean, you must have caught it at
14 some point because you changed your opinion.

15 A. What do you mean I changed my opinion?

16 Q. Well, now you're saying it could have gone -- the time
17 interval could have gone to September 1st and could have
18 lasted several days, not -- that's not what you put on
19 October 17, 2019. Not what you signed.

20 A. I -- I'm telling you I didn't see this.

21 Q. Well, you mean you're a physician, you're a
22 pathologist, you know some day you're gonna be in court,
23 you know this is an official record of the Medical
24 University of South Carolina, and you didn't look at it; is
25 that what you're saying?

1 A. I don't -- I didn't see this part of the report.

2 Q. So you're agreeing with me that you did not look at
3 this part of the report?

4 MS. MAYES: Asked and answered, Your Honor.

5 MR. SWERLING: No, I don't think so, Judge.

6 THE COURT: Yes, it has been. I'll agree that he
7 hasn't answered yet.

8 THE WITNESS: Yes. Yes.

9 THE COURT: Now he's answered.

10 BY MR. SWERLING:

11 Q. So back on December 31, 2021, you had a conversation
12 with the solicitor and I guess was there any law
13 enforcement officer on that conversation as well?

14 A. I don't recall.

15 Q. Okay. And apparently on that date you said that no
16 definitive time of death can be determined from an autopsy?

17 A. Correct.

18 Q. That's what you told the solicitor?

19 A. Yes.

20 Q. Okay. And on -- on that date -- and this is after a
21 phone conversation with the solicitor, correct?

22 A. I don't recall the conversation.

23 Q. See if this refreshes your memory.

24 MR. SWERLING: May I approach, Your Honor?

25 THE COURT: You may.

1 THE WITNESS: It says they conducted an interview
2 with me and whatever is on here is fine.

3 BY MR. SWERLING:

4 Q. By phone?

5 A. By phone.

6 Q. Okay. And you put down -- during your conversation
7 you told them that this -- the rigor mortis, livor mortis
8 present along with the skin slippage at the time of death
9 for Ms. Cedenio includes a timeframe of September 1, 2019?

10 A. Correct.

11 Q. Well, that doesn't square with your autopsy report,
12 which is an official record, does it? And I know your
13 explanation, but it doesn't square with that, does it?

14 A. Correct.

15 Q. Okay. And the reason that you -- you changed your
16 opinion or the reason you gave this opinion is that you
17 were told on that date that the timeframe of September 2,
18 2019, at 10:00 just didn't work. It was not possible.
19 That they were telling you that, correct?

20 A. No.

21 Q. It didn't fit with what they understood the facts to
22 be?

23 A. No.

24 Q. Well, why did you change your opinion then?

25 A. This was never my opinion.

1 Q. It's there. You signed it, Doctor.

2 A. I signed it because I didn't see it on there --

3 Q. Yeah, if I sign something --

4 A. -- but I didn't put it on there. That was never my
5 opinion.

6 Q. If I sign something, I'm documenting --

7 THE COURT: Wait. Let him finish. Let him finish.

8 All right. Go ahead, Mr. Swerling.

9 BY MR. SWERLING:

10 Q. Most professional people like doctors or lawyers or
11 many other type of people, if they sign something they're
12 affirming that that is the fact; yet on September -- on
13 December 31, 2021, you come along after a phone call with
14 the solicitor and you say well, the rigor mortis, livor
15 mortis and the slippage could include September 1st, which
16 is a whole, what, two days before?

17 A. I am very sorry for the error on this report.

18 Q. We don't want to make errors, do we, Doctor?

19 A. We're just -- no. Certainly not.

20 Q. So I'll ask you again. After December 31st when you
21 changed your -- excuse me. I don't want to use -- when you
22 wrote this opinion that it included September 1st after
23 speaking with the solicitor, you did not make an amended or
24 supplemental report, did you?

25 A. No, sir.

1 Q. And I'm sure it was pointed out to you that day when
2 you had that phone conversation -- I think you had another
3 phone conversation just last week on March 16th -- well,
4 it's more than -- a little bit more than a week. You
5 were made aware of the fact that your report had on it
6 September 2, 2019, at 10:00, and you did not issue a
7 supplemental report or clarify it?

8 A. No, but I will when I get back.

9 Q. I bet you will.

10 MR. SWERLING: I don't have any further questions.

11 THE COURT: Any redirect?

12 MS. MAYES: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. MAYES:

15 Q. I want to follow up a little bit more on that,
16 Dr. Beaver. Could you explain the portion of the report
17 that Mr. Swerling is -- is referring to? And -- and take
18 your time with this, please.

19 A. Yes. So when we in-take a case into our system, we
20 have a clerical person who gathers information from the
21 coroner. Usually the coroner calls us in the middle of the
22 night, usually they call us on a Sunday or sometime out of
23 business hours, long before the autopsy is going to be
24 performed, and they provide certain information, and one of
25 the things they provide in this form, it's in a format, a

1 form, is the date and time of death, and it is never right.
2 It is never right. And so which is why when I go to sign a
3 case out, I don't have the first part that they put, but I
4 have the part where I can put the date and the time of
5 death and when asked the date of death, I say see coroner's
6 report because I don't know and I'm not going to have an
7 opinion on that. I'm not gonna make a cause -- a time of
8 death or even -- even offer an estimate of death until we
9 get to a proceeding like this and I'm asked because I don't
10 know if it's even relevant and I don't know if I could even
11 be accurate enough to help anyone.

12 So -- so what happens here is that the coroner
13 provided information, our clerical staff has entered that,
14 and then that shows up as the header on every -- every
15 report that's printed out. So I don't deal with the
16 header. I only get the bottom portion. I don't see the
17 header. So that's where I look and I work off of and
18 that's what's here. Nowhere did I offer any opinion about
19 the time of death or even the date of death. When I was
20 called by the prosecutor, they asked -- they said hey, is
21 this --

22 Q. Let me -- let me phrase it like this.

23 MR. SWERLING: Objection to hearsay.

24 THE COURT: Wait a minute. Wait a minute.

25 Are you gonna rephrase the question --

1 MS. MAYES: Yes.

2 THE COURT: -- because it was hearsay?

3 MS. MAYES: Yes.

4 THE COURT: Thank you.

5 BY MS. MAYES:

6 Q. Without -- without getting into any information that
7 you received from any outside sources, can you look at the
8 case history? Was that included in your autopsy report?

9 A. Yes, ma'am.

10 Q. All right. As part of your case history, did you
11 yourself have a notation -- did you yourself make a
12 notation as to when the victim was last known to be alive?

13 A. Yes. 9-1-2019. The sentence reads the decedent is
14 a 45-year-old female who was last known to be alive on
15 9-1-2019.

16 Q. All right. So that would be September 1, 2019. So
17 you did have that information, Doctor?

18 A. Yes, ma'am.

19 Q. Now did you ever make a determination as to which of
20 these days she died?

21 A. No, ma'am.

22 Q. All right. And looking at all of the information
23 before you, Doctor, having reviewed the photographs, the
24 rigor mortis, the livor mortis and the skin slippage
25 present on September 3rd, do you have an opinion to a

1 reasonable degree of medical certainty as to that
2 timeframe?

3 A. The timeframe is at least twelve hours from when she
4 was found and up to seventy-two hours.

5 Q. All right. Up to seventy-two hours.

6 Now Mr. Swerling was also asking you about bullets.
7 So let me ask you is that anything that you're here to
8 testify about today, Doctor? Do you have any information
9 with any degree of certainty as to the type of bullet used
10 in this case?

11 A. No, ma'am.

12 Q. He was also asking you about cannabis or THC. Tell us
13 about THC and what that is in relation to someone who has
14 smoked marijuana in the past.

15 A. That THC is in the blood and we draw blood at the
16 autopsy for detection. The lower -- the levels are low.
17 It's not something -- because THC has such -- it's a very
18 mild effect, even less than alcohol most of the time. We
19 never used to even get a level on it. We wouldn't even get
20 a number. That toxicology labs would not give us a number.
21 They would just say positive or negative. And it also has
22 no interaction with any other drug. So unlike ethanol,
23 alcohol, when you take alcohol and opiates, you have a
24 problem. If you take alcohol and diaza -- you know,
25 diazepam or alprazolam, Xanax, you have a problem. There's

1 a lot of interaction. That's -- those interactions aren't
2 present with cannabis. So that's why we never got a number
3 because there were never any issues. Now we get numbers,
4 but the drug is low level here.

5 Q. All right. And when you saw low level, is it possible
6 for you to even determine exactly when marijuana may have
7 been consumed in relation to when she was killed?

8 A. No, ma'am.

9 Q. And, finally, Mr. Swerling was asking you about the
10 two entry wounds to the back, the two entry wounds to the
11 back that you have noted here on the forensic mannequin as
12 entry wound O and entry wound R, and your response was that
13 those were ones where you can place the body in position to
14 the shooter. What do you mean by that?

15 A. So the bullets are in the floor, so we know that
16 that's where they ended up and the bod -- they were under
17 the body, so that allows us to say the body was in that
18 position when the bullets went through the body and then
19 were recovered on the floor. So if she's standing up and
20 you shoot, say, this is hypothetically, hypothetically, you
21 shoot through the body, the bullet can travel any distance
22 and fall anywhere, it could even bounce around on the
23 floor, and so we can't really -- we don't really know the
24 endpoint of that trajectory. All we know is where it
25 exited the body, so we can't really say much. But here the

1 only thing that allows us to say that this is the exact
2 trajectory is because the bullets are under the body and
3 they're recovered there.

4 MS. MAYES: Thank you. Nothing further.

5 MR. SWERLING: Just give me one minute, Your
6 Honor.

7 THE COURT: Uh-huh.

8 RE CROSS EXAMINATION

9 BY MR. SWERLING:

10 Q. So let me see if I understand based on the redirect.
11 That now today you're saying that September 1st is included
12 within your timeframe based upon the fact that that was the
13 information given to you as the last known time that she
14 was alive?

15 A. No. If you -- if you presented me with the livor and
16 the rigor and the skin slippage and the day you found her
17 those things were present, then I would say, well, it takes
18 at least twelve hours for livor mortis to be -- be where
19 you can see it, it takes at least twelve hours for rigor to
20 develop, so it has to be at least twelve hours. Now how
21 long could it have been? Well, rigor will dissipate within
22 seventy-two hours, so if it was more than seventy-two hours
23 I would expect the rigor to be dissipated. So I can say
24 that it took at least -- it's at least twelve hours she was
25 killed from the time you discovered her -- with rigor and

1 livor present, it's at least twelve hours before that, and
2 up to seventy-two hours because rigor hasn't dissipated.

3 Q. So if it's twelve hours before and she was found at
4 11:00 on the 3rd, are you -- so twelve hours would be 11 PM
5 on the 2nd, correct?

6 A. Correct.

7 Q. That would be at the minimum?

8 A. That's the minimum.

9 Q. All right. Let me ask you something. I'm just -- I'm
10 just curious. Did you ever write a report memorializing
11 what you have testified to here today?

12 A. No.

13 MR. SWERLING: No further questions.

14 MS. MAYES: And, Your Honor, I just ask that
15 Dr. Beaver be excused back to MUSC.

16 THE COURT: Dr. Beaver, you're excused.

17 THE WITNESS: Thank you, ma'am.

18 THE COURT: Thank you for coming.

19 (Witness excused.)

20 THE COURT: All right, y'all. It's a little after
21 1:00. I'm gonna let the jury grab some lunch and then
22 we'll come back.

23 Mr. Foreman, ladies and gentlemen of the jury, I'm
24 gonna let you -- I'm gonna have you back in exactly an
25 hour, okay, so maybe we can get through this.

1 I'm gonna let you go to lunch. Remember, no talking
2 amongst yourselves or with anyone else or any research on
3 any type of mobile communication device.

4 With that, let's get back -- I've got 1:06 by
5 my watch. Let's be back in the jury room at 1:15 -- I
6 mean, 2:15, okay?

7 Thank you.

8 FOREPERSON: Thank you.

9 (Whereupon, the jury was excused for lunch at
10 1:06 PM.)

11 THE COURT: Okay. I've got to give them a lunch
12 break.

13 Okay. So can you tell me for scheduling how much do
14 we have left? Because I just picked a jury this morning
15 and sent them out. And, like I said, I'm not in a hurry
16 because worst scenario --

17 MS. MAYES: Right.

18 THE COURT: -- I can let y'all close and charge in
19 the morning and start that. I've just got to get some
20 idea that we can put it on the recording for the other
21 jurors.

22 MS. MAYES: Yes. Judge, I think we're gonna be
23 after 3:30 by the time we rest, so I don't know your --
24 your thoughts on that, but I would expect my argument
25 to be a minimum of thirty minutes and I don't --

1 THE COURT: Don't ask Mr. Swerling. Last time I
2 think he was two and a half hours.

3 MR. SWERLING: It's just I got -- ran out of breath.

4 THE COURT: And he did, but it took him two and a
5 half hours.

6 Well, let's just see. Why don't we have lunch and
7 see where y'all are. If she's gonna rest at 3:30, your
8 client needs to decide whether he's gonna testify and
9 I'm gonna talk to him on what y'all are gonna do.

10 I would just like some heads-up so I can give the
11 jury that I already selected this morning an idea.

12 MS. MAYES: Judge, I think the 3:30 estimate would
13 be best case scenario. It's really hard to --

14 THE COURT: Your 3:30 I'm counting 4:30.

15 MS. MAYES: Right. It's hard to gauge cross and --

16 THE COURT: And I'm with you on that. I think it's
17 probably a good 4:30 or 5:00. I'm not gonna charge a
18 jury that late, not -- not on this case, and let them
19 sit out all night long. I'm not gonna do it. I don't
20 want them to feel like they need to be in a rush. I'm
21 not gonna do that.

22 So it might be best -- I'm gonna -- if there's a
23 defense and it's gonna take all day Tuesday, then I've
24 got to just make some arrangements. Why don't we just
25 talk about it at about 3:30?

1 That still gives me time to put it on the recording,
2 doesn't it, Myra?

3 THE CLERK: Yes, ma'am. As long as it's in there
4 before 6:00 they usually -- because, you know, we tell
5 them to call back after 6:00, so as long as she has some
6 kind of timeframe around four or five so she can start
7 putting it on the list, the phone and all that.

8 THE COURT: Okay.

9 All right. With that said, let's go to lunch,
10 y'all.

11 I'll see you at 2:15.

12 (Whereupon, a luncheon recess was taken at 1:10 AM.)

13 (Back on the record at 2:20 PM.)

14 THE COURT: Okay. Are we ready to --

15 MS. McMENAMIN: Just a moment, Your Honor, but our
16 next witness is waiting and ready to be called.

17 THE COURT: Okay.

18 (State's Exhibit Number 239 through 245 were marked
19 for identification.)

20 THE COURT: All right. Can I bring the jury in?

21 MS. MAYES: Yes, Your Honor.

22 THE COURT: Okay. Let's bring them in.

23 (Whereupon, the jury return to the courtroom at
24 2:25 PM.)

25 THE COURT: Mr. Foreman, are we ready?

1 FOREPERSON: We are.

2 THE COURT: Okay. Thank you.

3 The State may call their next witness.

4 MS. McMENAMIN: The State calls Deputy Coroner
5 Gray Gain.

6 (Whereupon, Gray Gain was duly sworn by the Clerk
7 of Court.)

8 THE CLERK: If you'll have a seat, please, over
9 there.

10 If you'll state your name and spell your last,
11 please, for the record.

12 THE WITNESS: My name is Gray Gain.

13 GRAY GAIN,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. McMENAMIN:

17 Q. Good afternoon. Can you tell the jury where you're
18 currently employed?

19 A. Currently employed with the Lexington County Coroner's
20 Office.

21 Q. And what is your position there?

22 A. A deputy coroner.

23 Q. How long have you worked for the coroner's office?

24 A. A little over five years.

25 Q. Okay. And in your role as the deputy coroner, do you

1 ever respond to crime scenes?

2 A. Yes.

3 Q. Do you recall responding to the scene at 216 Carriage
4 Hill Court in Lexington on September 3rd of 2019?

5 A. I do.

6 Q. And is that address located in Lexington county?

7 A. It is.

8 Q. When you responded that day, did you have an
9 opportunity to view the inside of the home?

10 A. I did.

11 Q. Did you have an opportunity to view the body of
12 Roselyn Cedeno?

13 A. I did.

14 Q. And did you make a report after going to the scene?

15 A. Yes.

16 Q. In that report, Deputy Coroner, did you list a date
17 and time of death?

18 A. I did. I listed a presumed date and time of death.

19 Q. What was the presumed date and time of death listed?

20 A. The presumed date and time of death was on the 2nd of
21 September at 10 AM.

22 Q. In 2019?

23 A. Correct.

24 Q. Okay. Now you used the word "presumed". What do you
25 mean by that?

1 A. Presumed time of death and date of death is simply an
2 estimated date and time of death based on my assessment of
3 the scene and the individual.

4 Q. So is there any scientific basis to the date and time
5 that you provided?

6 A. There is not.

7 Q. Okay. Can you narrow date -- date and time of death
8 down that specifically?

9 A. Not specifically.

10 Q. Okay. But it's listed in the report as a specific
11 time. Can you explain that?

12 A. The date and time that I used is based on the system
13 that we used to use for reporting in our office where we
14 had to provide a date and time and the date and time that
15 I used in this instance was based on electronic devices
16 that were identified as Ms. Cedeno's that had the last
17 known contact information on the 2nd at, I believe it
18 was, 10:15 AM was her first missed messages leading me to
19 identify that she was deceased at that time.

20 Q. So would there be a range of time that you could give?

21 A. There absolutely could be.

22 Q. Okay. Would that -- what would that range of time
23 include?

24 A. Based on information that was obtained after my
25 initial assessment, it would be presumed between the 1st

1 of September and the time that I had listed as a presumed
2 time of death.

3 Q. Okay.

4 MS. McMENAMIN: I beg the Court's indulgence.

5 Nothing further for this witness at the time,

6 Your Honor.

7 THE COURT: Mr. Swerling.

8 MR. SWERLING: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. SWERLING:

11 Q. Mr. Gain, did -- Jack Swerling. How are you?

12 A. Good, sir. Yourself?

13 Q. I'm getting real confused here.

14 So you're saying your report says time of death -- on
15 the front page of Coroner's Summary Report, it says date
16 of death September 2, 2019; time of death at 10 AM.

17 A. Correct, sir.

18 Q. That's your -- that's the face page of the report?

19 A. Yes, sir. That's my presumed time of death at that
20 time.

21 Q. It doesn't -- it doesn't say that though. Let me
22 show you and refresh your memory if this will refresh your
23 memory.

24 MR. SWERLING: If that's all right, Your Honor?

25 THE COURT: Absolutely.

1 THE WITNESS: Yes, sir.

2 BY MR. SWERLING:

3 Q. Is that correct?

4 A. Yes, sir.

5 Q. So it does not say in the -- on the front cover of the
6 report that it's a presumed time of death and it just says
7 September 2, 2019, at 10 AM.

8 A. Correct.

9 Q. And now this morning -- or this afternoon, you are
10 saying that it -- tell me what -- tell me what range you're
11 giving.

12 A. The -- in answer to the presumed time of death that
13 is annotated in my report and my narrative that I presumed
14 her death to have occurred and that was based on the
15 information at the scene at that time. Later information
16 was discovered that there was further activity by
17 Ms. Cedenno prior to my date that I presumed and at that
18 point as annotated in the investigative report with the
19 solicitor's office, I did explain that, yes, the death
20 could have occurred prior to my presumption.

21 Q. That was after they explained to you, I guess, that
22 September 2nd at 10 AM just didn't work -- the numbers
23 didn't work; isn't that true?

24 A. Negative. We were able to determine that there was
25 activity by Ms. Cedenno on the day prior.

1 Q. Okay.

2 A. Therefore, allowing me a presumed time between her
3 last known activity and a known time of her...

4 Q. Known time of what?

5 A. When I assessed her death.

6 Q. Okay. And so you didn't go there until September 3,
7 2019; is that correct?

8 A. That would be the day that we responded, yes, sir.

9 Q. All right. Okay. And I'm just curious, what other
10 information did you receive that would change your mind
11 about the presumed time of death?

12 A. The other information that was received after that
13 time was through the investigation conducted by the
14 sheriff's department and phone -- downloading the phone
15 records and cellular data, iPad records.

16 Q. Well, what -- what about the phone records would
17 change the time that you're talking about and the date of
18 death?

19 A. That I know that she was actually alive on one date
20 and then deceased on another date, so that gives me a
21 timeframe.

22 Q. Alive on what date?

23 A. She's alive on the 1st of September.

24 Q. Okay. And not alive on the 3rd?

25 A. And not alive on the 3rd when I was there.

1 Q. And you don't know whether or not she just didn't
2 answer the phone or didn't want to answer the phone or what
3 -- what she did with the phone, do you?

4 A. I can't speak for what she would have done.

5 Q. Right. So what you're really doing is you're really
6 just guessing as to the presumed time of death on this
7 range that you're discussing?

8 A. That's what a presumed time of death is.

9 Q. It's a guess?

10 A. It's an estimated time.

11 Q. And, of course, in this type of case, we don't want
12 to guess about the time of death or who did it or what, so
13 I guess I'm curious, did -- did you -- I don't -- did you
14 ever change your report?

15 A. Negative. I did not.

16 Q. So the only report in existence at the coroner's
17 office is the one that you did on -- I guess this is -- I'm
18 trying to look for the date. Do you know what date this
19 report was done on?

20 A. This report would have been done within twenty-four
21 hours of responding to the call.

22 Q. Okay. So it was done somewhere in September of 2019,
23 correct?

24 A. Correct.

25 Q. And I see there's some -- some supplemental pages that

1 are dated October 28, 2019, October 8th, October 24th,
2 correct?

3 A. Correct, sir.

4 Q. And nowhere there on those supplemental reports is it
5 listed that you extended the time of the death from the 2nd
6 at 10:00 to the day before?

7 A. That's correct.

8 Q. I'm sorry. Yeah, the 2nd at 10 AM, correct?

9 A. Correct, sir.

10 Q. And -- I mean, the better practice would have been to
11 amend your report so that there's an official record at the
12 coroner's office, correct?

13 A. Correct.

14 MR. SWERLING: Thank you.

15 THE COURT: Any redirect?

16 MS. McMENAMIN: Yes, Your Honor, briefly.

17 REDIRECT EXAMINATION

18 BY MS. McMENAMIN:

19 Q. Deputy Coroner Gain, is the date and time of death an
20 exact or inexact time that is listed at the top of your
21 report?

22 A. No, ma'am. It's not an exact date and time.

23 Q. Okay. And in the narrative of that same report, did
24 you specify whether or not this was exact or a presumed
25 time?

1 A. I annotated that it was presumed.

2 Q. And after the date of September 3rd and 4th when this
3 report would have been generated, were you then privy to
4 cell phone data showing that there were communications on
5 the evening of 9-1 in the victim's phone data?

6 A. It would have been within those days following, yes.

7 Q. Okay. So afterwards you were privy to that
8 information?

9 A. Correct.

10 MS. McMENAMIN: Nothing further, Your Honor.

11 MR. SWERLING: I have nothing.

12 THE COURT: Okay. May I excuse the deputy then?

13 MS. McMENAMIN: Yes, Your Honor.

14 THE WITNESS: Thank you, Your Honor.

15 (Witness excused.)

16 MS. McMENAMIN: Our next witness, Your Honor, is
17 Brian Anderson. Sergeant Brian Anderson.

18 (Whereupon, James Brian Anderson was duly sworn by
19 the Clerk of Court.)

20 THE CLERK: If you'll have a seat over there,
21 please. State your name and spell your last for the
22 record.

23 THE WITNESS: I'm Sergeant James Brian Anderson.

24 JAMES BRIAN ANDERSON,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. McMENAMIN:

3 Q. Sergeant Anderson, where are you currently employed?

4 A. For Lexington County Sheriff's Department.

5 Q. How long have you worked there?

6 A. A little over twenty-five years.

7 Q. And what is your current position?

8 A. Currently I'm a sergeant over a major crimes
9 investigations team.

10 Q. Okay. And were you in that same position in 2019?

11 A. Yes.

12 Q. And do you recall responding to a crime scene at
13 216 Carriage Hill Court on September 3rd of 2019?

14 A. I do.

15 Q. And is that in Lexington County?

16 A. It is.

17 Q. So when you responded, were you present at all when
18 crime scene investigators were photographing the inside of
19 the home?

20 A. Yes.

21 Q. Okay.

22 MS. BARBIER: Your Honor, may we approach?

23 THE COURT: You may.

24 (Proceedings held at the bench; not reported.)

25 THE COURT: Okay. Go ahead.

1 MS. McMENAMIN: Thank you, Your Honor.

2 BY MS. McMENAMIN:

3 Q. And, Sergeant Anderson, when you were with crime scene
4 on that day of September 3rd, were you with them throughout
5 the home?

6 A. Periodically.

7 Q. Or various locations in the home?

8 A. Yes.

9 MS. McMENAMIN: Permission to approach the witness,
10 Your Honor.

11 THE COURT: Absolutely.

12 BY MS. McMENAMIN:

13 Q. Sergeant Anderson, do you recall viewing the kitchen
14 area or pantry area of this home?

15 A. I do.

16 Q. Okay. I'm now handing you State's Exhibit 244 and
17 243. Do you recognize these?

18 A. Yes.

19 Q. Are these photos of the pantry area?

20 A. They are.

21 Q. Okay.

22 MS. McMENAMIN: The State would offer Exhibit 243
23 and 244 into evidence.

24 THE COURT: Any objection?

25 MR. SWERLING: No, Your Honor. Well, no additional

1 objections.

2 THE COURT: No additional objections to the original
3 objection?

4 MR. SWERLING: Right.

5 THE COURT: So noted and it's admitted for evidence.

6 MS. McMENAMIN: Thank you, Your Honor.

7 (State's Exhibit Number 243 and 244, photographs,
8 were admitted into evidence.)

9 BY MS. McMENAMIN:

10 Q. And, Sergeant Anderson, do you recall seeing a
11 basement level room?

12 A. I do.

13 Q. A room maybe with makeup and things of that nature in
14 it?

15 A. Yes.

16 Q. I'm now showing you State's 239, State's 240, State's
17 241, State's 242. Do you recognize these photographs?

18 A. I do.

19 Q. Where are they from in the home?

20 A. They are from that basement room.

21 Q. Okay.

22 MS. McMENAMIN: The State offers 242, 241, 240 and
23 239.

24 THE COURT: Any additional objections?

25 MS. BARBIER: No, Your Honor.

1 But these are the ones you just showed us?

2 MS. McMENAMIN: Yes.

3 THE COURT: Yes.

4 They are admitted then.

5 MS. McMENAMIN: Thank you, Your Honor.

6 (State's Exhibit Number 239 through 242,
7 photographs, were admitted into evidence.)

8 MS. McMENAMIN: Permission to publish?

9 THE COURT: Yes, ma'am.

10 BY MS. McMENAMIN:

11 Q. Sergeant Anderson, starting with State's 243, what
12 does this photograph depict?

13 A. It's a -- like a pantry area near the kitchen.

14 Q. Okay. Would you described this as a private area or
15 a common area?

16 A. It's a common area of the home.

17 Q. And State's 244, is this just sort of a zoomed in
18 photograph?

19 A. Yeah, that's a more close in view of that same
20 picture, yes.

21 Q. Whenever you were with CSI and they were looking at
22 this area in the home, did they find any marijuana in the
23 home?

24 A. Yes.

25 Q. Is that depicted in this photograph?

1 A. It is.

2 Q. On the shelf next to the crockpot?

3 A. In the glass jar, yes.

4 Q. Near the 29 marker?

5 A. Correct.

6 Q. Okay. Did you find marijuana anywhere else in the
7 home?

8 A. There was some marijuana in that downstairs room as
9 well.

10 Q. Already in evidence, State's 204, is this the room
11 that you're referring to, Sergeant Anderson?

12 A. It is.

13 Q. What do we see in State's 239? Do we see any
14 marijuana in this photo?

15 A. Yes, on that middle shelf there's a plate with what
16 I'd refer to as butts of marijuana.

17 Q. Okay. And what about State's 240?

18 A. I'd say a partially burned marijuana cigarette and
19 then --

20 Q. Is that further depicted here in 242?

21 A. Yes.

22 Q. And then what about in State's 241?

23 A. That's a smoking device that commonly is associated
24 with marijuana use.

25 Q. Okay. Now in addition to being present with crime

1 scene and at this scene throughout that day, as a sergeant
2 of the majors crimes unit do you know if there were any
3 efforts made to canvass the area on that day?

4 A. There were.

5 Q. And do you know if as a result of this canvassing if
6 any security footage was obtained from neighboring homes?

7 A. No.

8 MS. McMENAMIN: I beg the Court's indulgence.

9 BY MS. McMENAMIN:

10 Q. And what about the home itself, 216 Carriage Hill
11 Court, do you recall if it had any security cameras?

12 A. There were no security cameras that I know of.

13 MS. McMENAMIN: Thank you.

14 THE COURT: Any cross?

15 MS. BARBIER: Just briefly, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. BARBIER:

18 Q. So, Sergeant Anderson, the pictures that we just saw
19 of marijuana butts, were any of those sent for DNA testing?

20 A. I couldn't answer that. I don't know.

21 Q. Did you personally do that?

22 A. No.

23 Q. Okay.

24 A. CSI would have handled that -- that portion of it.

25 Q. Okay. And when you said you canvassed the area, can

1 you explain what you mean by that?

2 A. So as the supervisor on the scene, there were other
3 -- other officers in the area that were tasked with
4 canvassing the neighborhood, knocking on doors, looking
5 for surveillance videos, things of that nature.

6 Q. Were any of the wit -- the neighbors interviewed?

7 A. Yes.

8 Q. Okay. And there's a significant amount of woods
9 behind Mr. Shivers's house; is that right?

10 A. I believe so, yes.

11 Q. Okay. And how many officers searched those woods?

12 A. I know that we had a -- our K-9 unit came out, I
13 believe, the following the day and did a woods search
14 behind the house. As far as detectives, I don't know that
15 any of us made any -- any searches in the woods, no.

16 Q. And the -- you didn't search the woods for the murder
17 weapon?

18 A. So the K-9 officers the following day did a -- they do
19 what's called an arc search with their -- with their dogs
20 and I asked for their assistance with conducting a search
21 there.

22 Q. But other than the K-9 officers, did anybody go out
23 and -- and visually canvass the woods and search the woods
24 for a murder weapon?

25 A. So to my knowledge, no. Are we talking about the yard

1 or the woods associated with the property?

2 Q. Either one.

3 A. I couldn't say.

4 MS. BARBIER: I don't have any other questions.

5 Thank you.

6 THE COURT: Thank you.

7 Any redirect?

8 MS. McMENAMIN: Yes, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. McMENAMIN:

11 Q. Sergeant Anderson, you were asked whether or not you
12 had the marijuana DNA tested. Where was this marijuana
13 located?

14 A. Well, the jars were located in a -- in the pantry in
15 the common area of the house. The other portions were in
16 the downstairs room.

17 Q. So in a common area that multiple people could have
18 accessed?

19 A. Correct.

20 Q. And the marijuana that you saw, did it appear to be
21 for recreational use?

22 MS. BARBIER: Objection. That's speculative.

23 MS. McMENAMIN: I can re -- I can rephrase, Your
24 Honor.

25 THE COURT: Thank you. Rephrase it.

1 BY MS. McMENAMIN:

2 Q. Based on -- how long did you say you'd been working at
3 the sheriff's department?

4 A. Twenty-five years.

5 Q. Based on your twenty-five years of training --

6 MS. BARBIER: Objection.

7 THE COURT: Do you want to rephrase it or --

8 MS. McMENAMIN: I will move on, Your Honor. Thank
9 you.

10 THE COURT: Thank you.

11 BY MS. McMENAMIN:

12 Q. Based on your observation of the scene that day and
13 your training and experience, can you tell us based on that
14 whether or not this appears or did not appear to be for
15 recreational use?

16 MS. BARBIER: Objection.

17 THE COURT: All right. Let me see the lawyers --

18 MS. BARBIER: And, Your Honor, I have a matter of
19 law to address.

20 (Proceedings held at the bench; not reported.)

21 THE COURT: All right. Go ahead.

22 MS. McMENAMIN: Thank you, Your Honor.

23 BY MS. McMENAMIN:

24 Q. Sergeant Anderson, you recall seeing a photograph
25 earlier of the pipe or smoking device?

1 A. Yes.

2 Q. Did that appear -- can you tell us whether or not that
3 appeared to be for recreational use based on your training
4 and experience?

5 A. It appeared to be, yes.

6 Q. Okay. And you were asked some questions about the
7 canvassing and things of that nature. As part of that and
8 your position as sergeant, can you tell us whether or not
9 there were any suspicious persons in the area reported or
10 observed?

11 A. None to my knowledge.

12 MS. McMENAMIN: Nothing further for this witness.

13 THE COURT: Thank you.

14 Ms. Barbier.

15 RE CROSS EXAMINATION

16 BY MS. BARBIER:

17 Q. The pictures that were just introduced --

18 MS. BARBIER: Where are they.

19 THE COURT: Ms. McMEnamin, do you know where those
20 photos --

21 MS. McMENAMIN: Right there, Your Honor.

22 THE COURT: Okay.

23 BY MS. BARBIER:

24 Q. So the State asked you to look at these photographs
25 and describe where some marijuana was found. Does this

1 look -- appear to be a female's closet?

2 A. It -- there was ladies clothing and mostly items
3 associated with a female, yes.

4 Q. And that's where you found a plate of marijuana?

5 A. Yes.

6 Q. Okay. And this looks like a makeup desk; is that
7 right?

8 A. Yes.

9 Q. And there's a -- a joint in the -- in the dish there;
10 is that right?

11 A. Yes, ma'am.

12 Q. And this is also on a makeup desk, right?

13 A. Yes.

14 Q. And that's a smoking device for marijuana, right?

15 A. Yes.

16 Q. And this was also on the makeup desk?

17 A. That's --

18 Q. The same one?

19 A. Yeah.

20 Q. Okay.

21 MS. BARBIER: Nothing further.

22 MS. McMENAMIN: Nothing further from the State for
23 this witness, Your Honor.

24 THE COURT: May I -- I'll let him step down then.

25 MS. McMENAMIN: Yes. Thank you, Your Honor.

1 THE COURT: You may be excused. Thank you.

2 THE WITNESS: Thank you, Your Honor.

3 (Witness excused.)

4 MS. MAYES: The State calls Sergeant Brian Travis.

5 (Whereupon, Brian Travis was duly sworn by the
6 Clerk of Court.)

7 THE CLERK: If you'll have a seat over there,
8 please. State your name and spell your last for the
9 record.

10 THE WITNESS: Brian Travis, T-R-A-V-I-S.

11 BRIAN TRAVIS,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. MAYES:

15 Q. Good afternoon, Sergeant Travis. Tell us a little
16 bit about yourself. Where are you employed and in what
17 capacity?

18 A. I am a sergeant with the Lexington County Sheriff's
19 Department assigned to the professional standards division.

20 Q. All right. Now if you could pull the microphone up a
21 little bit closer to you and speak a little bit louder.

22 So professional standards division. Tell us what type
23 of work you did before you moved to internal affairs.

24 A. For seven years I worked in the intelligence unit
25 as a criminal intelligence analyst specializing in

1 communications analysis.

2 Q. All right. Tell us about your educational background
3 and training specifically in the field of cell tower phone
4 mapping, location data and communications analysis.

5 A. I have bachelor's and master's degrees from the
6 University of South Carolina in physics, which is the
7 science back -- background behind how cell tower -- excuse
8 me -- cell phones work. I then went through training with
9 the International Association of Crime Analysts, the
10 Internation Association of Law Enforcement Intelligence
11 Analysts, as well as training through software companies
12 PenLink, Cellebrite and GeoTime to better utilize their
13 software, and all that professional training is all
14 focussed around communication analysis.

15 Q. All right. And can you tell us whether or not that
16 includes a review of provider records such as Verizon,
17 AT&T, Sprint, telephone provider records such as that?

18 A. Yes. So with communications analysis, we look at cell
19 phone records and other information we're able to obtain
20 and we analyze those communications to see locations,
21 patterns and things of that order.

22 Q. Now do some cell tower -- some cell phone provider
23 records include cell tower location data?

24 A. All of the phone companies have the ability to provide
25 location data if they are able -- if they record it for

1 that transaction.

2 Q. And based on that information, can you tell us whether
3 you have educational training and experience in mapping
4 locations associated with the cell tower location data
5 within provider records?

6 A. Yes. So besides the professional organizations that
7 I've trained in, like I said, I went through specific
8 software training, PenLink, Cellebrite and GeoTime, as well
9 as with ArcMap and ArcGIS training and mapping, to be able
10 to map those locations.

11 Q. All right. And can you tell us whether that also
12 includes review of ingoing, outgoing call detail records?

13 A. It does.

14 Q. Including ingoing and outgoing phone calls?

15 A. Yes.

16 Q. Ingoing and outgoing text messages?

17 A. Yes.

18 Q. As well as other multi -- multimedia-type messaging?

19 A. Correct.

20 MS. MAYES: Your Honor, at this time the State
21 offers Sergeant Brian Travis as an expert in the field
22 of cell tower mapping and communications analysis.

23 THE COURT: Any objection?

24 MS. WILSON: No objection.

25 THE COURT: All right. I'm gonna tell the jury

1 that Sergeant Travis is qualified as an expert in the
2 area -- area of cell tower mapping and communication
3 analysis and may give an opinion in that area. It
4 doesn't mean that you have to accept the opinion, but
5 it's evidence for you to use in any way you see fit.

6 Thank you.

7 BY MS. MAYES:

8 Q. Now, Sergeant Travis, is it possible for you to
9 estimate how many such times you've previously testified
10 as an expert in this field?

11 A. Fourteen.

12 Q. Okay. And can you tell us whether that includes cases
13 here in Lexington county?

14 A. Thirteen of the fourteen were in Lexington county.

15 Q. Okay. So, Sergeant Travis, back in 2019, tell us what
16 you recall in terms of initially being approached about
17 this case.

18 A. I was initially given cell phone records while I was
19 in the intelligence unit to look at to see if there was any
20 location data. At that time when I reviewed the records,
21 there was no records for what the investigators were
22 looking like for location information.

23 Q. All right. So I want to talk about that a little bit
24 in a little bit more detail as we proceed, but have you had
25 the opportunity to review the Verizon cell phone records

1 for the defendant in this case, Vincent Shivers?

2 A. I have.

3 Q. Have you had the opportunity to review the Verizon
4 cell phone records for the victim in this case, Roselyn
5 Cedenno?

6 A. I have.

7 Q. Now are you able to just get a location on someone any
8 time or any place by looking at the records?

9 A. No, you are not.

10 Q. What must be there in order for you to get a location
11 for that person at any particular date or time?

12 A. So in order for there to be any kind of location
13 information on a call detail record, the cell phone network
14 has to record a transaction that collects that. Generally,
15 that's gonna be for Verizon only phone calls, so there
16 would have to be a completed phone call where the phone's
17 talking with a network tower and that gives a tower
18 location which gives a general area that the phone is in.

19 Q. All right. So for Verizon, it's gonna require a phone
20 call?

21 A. Correct.

22 Q. Is a text alone enough in Verizon records to determine
23 a location?

24 A. Verizon does not record location data for text
25 messaging.

1 Q. All right. So I'm gonna take a look here at
2 State's 159, being a calendar, and we're gonna start with
3 September 1st. I'm gonna give you a laser pointer as well.

4 Beginning on the day of September 1st, being a Sunday,
5 what is the last known phone call received by the phone of
6 Roselyn Cedeno? And if you could read out for the record
7 what Verizon cell phone account number you're referring to.

8 A. So the Verizon phone number that's listed is
9 803-522-3431.

10 Q. All right. Now what is the last known phone call
11 received by this phone or made by this phone?

12 A. At 11:27 AM on the 1st, there's an incoming -- or,
13 sorry, outgoing phone call to 864-978-2627.

14 Q. 978-2627?

15 A. Yes.

16 Q. All right. And do you have information before you to
17 determine who is associated with that particular account
18 that ends in 2627?

19 A. The defendant.

20 Q. Okay. So that's gonna be Vincent Shivers.

21 Now were you able to get location data for Ms. Cedeno
22 based on this call at 11:27 to Vincent Shivers?

23 A. Yes.

24 Q. And what were you able to determine about the location
25 of Roselyn Cedeno when that call was made?

1 A. The cell phone tower for that phone call is going to
2 be the one closest to her residence and the antenna is the
3 one that points in the general direction of the residence.

4 Q. Okay.

5 A. So it would be consistent with her being at the
6 residence.

7 Q. All right. And what is that street address for that
8 cell tower?

9 A. I believe it's 1426 -- hold on one second. I don't
10 have the full records in front of me. I believe it's
11 1426 North Lake Drive.

12 Q. All right. I'm gonna show you a photograph and ask
13 you whether or not you recognize it.

14 This will be State's 157 and 158. Do you recognize
15 those photographs?

16 A. Yes. Those are pictures that show the residence and
17 the closest cell phone tower at 1426 North Lake.

18 Q. All right.

19 MS. MAYES: I believe without objection, Your Honor.

20 MS. WILSON: No objection.

21 THE COURT: Thank you. They're admitted.

22 (State's Exhibit Number 157 and 158, photographs,
23 were admitted into evidence.)

24 BY MS. MAYES:

25 Q. All right. So we're gonna take a look here at this

1 particular photograph being State's 157. And you said the
2 street address for this particular cell tower is?

3 A. 1426 North Lake Drive in Lexington.

4 Q. Can you tell us whether or not this tower is in
5 proximity to the home?

6 A. It is.

7 Q. How close within proximity is it to 216 Carriage Hill
8 Court?

9 A. So you can see -- this is the tower up here and this
10 is a measurement line using the map and you can see right
11 here it states 2,679 feet, which is roughly half a mile.

12 Q. Would this be the tower closest to the residence at
13 216 Carriage Hill Court?

14 A. Yes.

15 Q. And based upon your training and experience, would
16 that be the tower one would most likely hit when making a
17 phone call from that residence?

18 A. Yes.

19 Q. Now on this same date and time, I believe you
20 indicated that the call is to Vincent Shivers. Looking
21 at his records, were you able to get a location for
22 Vincent Shivers?

23 A. Yes, I was.

24 Q. Okay. What, if anything, did you determine about the
25 location of Vincent Shivers based on the cell tower data?

1 A. So his -- the phone that's associated with his
2 account, utilized the same tower; however, on a different
3 side of the tower. So each tower has roughly three
4 antennas. They each have about 120 degrees of coverage to
5 give you a full coverage, so depending on which side of the
6 tower you're on depends on which sector you hit off of. So
7 it was a different sector than the victim's phone. It
8 would have been the one that points up in this direction.

9 Q. All right. What, if anything, does that indicate to
10 you?

11 A. Based on the sectors, because the phone company tells
12 you which direction they point in, he would not have been
13 at the residence at the time of the call. He would have
14 been on the north side of the tower.

15 Q. All right. And you're familiar with Lexington county?

16 A. Yes, I am.

17 Q. Can you tell us whether or not his location is
18 consistent with travelling in the direction of Camping
19 World?

20 A. It would be. It would be the direction heading
21 towards the dam, somewhere to the north, northeast section.

22 Q. All right. So that's at 11:27 AM. Next when do you
23 see another phone call for Vincent Shivers, to or from
24 Vincent Shivers, on the date of September 1st?

25 A. 12:38 PM.

1 Q. All right. And on 12 -- on this -- on September 1,
2 2019, 12:38 PM, what, if anything, were you able to
3 determine about the location of Vincent Shivers and what
4 cell towers he was in proximity to when this call was made
5 at 12:38 PM?

6 A. So the 12:38 call connected to the tower at
7 1118 St. Andrews Road, which is approximately about one
8 mile from Camping World, and the sector that the phone
9 call connected to would be the direction that faces Camping
10 World.

11 Q. All right. We're gonna take a look here at
12 State's 158. What are we looking at here?

13 A. So that is a blown up picture -- or a farther zoomed
14 out picture. This is the tower at 1118 St. Andrews and the
15 red bubble there is Camping World and that line is showing
16 a straight line measured distance between them.

17 Q. All right. And, again, this tower here at this
18 location, can you tell us whether or not it includes
19 Camping World?

20 A. It would.

21 Q. So now looking at 49 in evidence -- looking at 49
22 in evidence, if you can tell us is the data that you have
23 informed us of here, being the call at 11:27 and then the
24 second call at 12:38, can you tell us whether or not that's
25 consistent with the defendant moving from the direction of

1 Carriage Hill Court to Camping World by 12:38?

2 A. It would.

3 Q. Now after these phone calls on September 1st at those
4 times, do you see any other answered calls for Roselyn
5 Cedenno after that time?

6 A. No.

7 Q. Do you see any other calls made to or by -- made to
8 the phone of Vincent Shivers or from the phone of Vincent
9 Shivers after that call at 12:38 PM?

10 A. Specifically on the 1st?

11 Q. Right.

12 A. There were no calls from -- I don't believe there were
13 any calls to it on the 1st, but I'm not a hundred percent
14 without the records.

15 Q. Okay. I'm gonna show you some records to refresh your
16 memory. Looking here at 26 and 237 and 245.

17 A. Yeah, there was -- there were no other calls on the
18 1st.

19 Q. All right. So beyond this location data that you
20 were able to ascertain, do you have any other information
21 regarding the whereabouts of Vincent Shivers other than
22 what you have informed us of ending at 12:38 PM?

23 A. Not from the phone records.

24 Q. All right. Now you mentioned that Verizon cannot
25 ascertain a location from a text?

1 A. Correct.

2 Q. But is there a record of text messages?

3 A. Yes.

4 Q. And does that include content for certain text
5 messages?

6 A. Within limited scope, yes. Verizon's the only company
7 that has text message records where you can get the content
8 for a limited window within the -- within the timeframe
9 you're asking for.

10 Q. Okay. I'm gonna show you now also what is State's 238
11 and 9 for review only at this time. Can you tell us what
12 the last outgoing text was for Vincent Shivers on the date
13 of September 1, 2019?

14 A. The content or the time?

15 Q. The date and time and then we'll get into content in
16 a moment.

17 A. So on the content records, they list the time in --
18 in Zulu Time or Greenwich Mean Time, so it shows on the
19 records here as 9:22 PM, which corresponds to 5:22 PM
20 Eastern Standard Time.

21 Q. All right. 5:22 PM Eastern Standard Time. And is
22 that a text or a call?

23 A. That's a text message.

24 Q. All right. And that text message is sent to who?

25 A. 803-522-3431.

1 Q. And I believe that's the phone number you previously
2 identified as the account of Roselyn Cedenno?

3 A. Correct.

4 Q. And does the information before you tell you the
5 content of that text message?

6 A. It does.

7 Q. And what is that content?

8 A. It's the words "on my way".

9 Q. Do you have any other outgoing text messages from the
10 phone of Vincent Shivers other than this message "on my
11 way" at 5:22 PM on the 1st?

12 A. No.

13 Q. Now looking at the records before you, and I believe
14 that covered the timeframe of late August through
15 September 5th, can you tell us whether you had seen a
16 pattern or a history of that particular text message
17 before?

18 A. Yes. During -- in the records that were provided from
19 Verizon, there were two other times where the same numbers
20 were utilized to send the same message, "on my way".

21 Q. Okay. So on 9-1 at 5:22 PM, "on my way". What is
22 the next -- or preceding time before this in which the same
23 text message appeared?

24 A. It's 7:01 PM on the 28th of August.

25 Q. And that phrase?

1 A. "On my way".

2 Q. And when, if at all, did you see it prior to that?

3 A. At 7:11 PM on the 27th of August.

4 Q. And, again, that phrase?

5 A. "On my way".

6 Q. Can you tell us whether or not that content was
7 included in the Verizon provider records that you received?

8 A. It was.

9 Q. All right.

10 MS. MAYES: And that particular exhibit number,
11 being 238, the State does offer as evidence at this
12 time, Your Honor.

13 THE COURT: Okay. Any objection?

14 MS. WILSON: No objection.

15 THE COURT: All right. Wait -- Ms. Mayes, hang on
16 one second.

17 (State's Exhibit Number 238, call detail records,
18 were admitted into evidence.)

19 BY MS. MAYES:

20 Q. Now this text, being "on my way", 5:22 PM,
21 September 1st, and I think you indicated that the Z up
22 there at the top has a notation known to law enforcement.
23 What is that?

24 A. So a common vernacular for a time phrase is when you
25 use UTC or Greenwich Mean Time is to call it Zulu Time and

1 if you see right there at the end of the time there's a Z,
2 that's what the notation for Zulu is.

3 Q. All right. So that's how you're able to convert the
4 time to 5:22 PM Eastern Standard Time?

5 A. Correct.

6 Q. Now September 1, 2019, 5:22, this text from Vincent
7 Shivers to Roselyn Ceden0, upon reviewing the entirety of
8 the record that you received can you tell us whether or not
9 you ever see a text from Vincent Shivers to Roselyn Ceden0
10 after that date and time?

11 A. There's not.

12 Q. Do you ever see a phone call from Vincent Shivers to
13 Roselyn Ceden0 after the date of September 1st?

14 A. No, there is not.

15 Q. Do you also have the background, training and
16 experience to analyze phone records to make a determination
17 as to whether a phone has been cut off?

18 A. Yes.

19 Q. And were you able to do this in this particular case
20 involving the phone of Vincent Shivers, being that phone
21 that ends in the 2627?

22 A. Yes.

23 Q. What can you tell us, Sergeant Travis, about when this
24 phone appears to be cut off and inactive?

25 A. Based off the connection records, so the records that

1 show how it's connected to the network, they connect in --
2 in six-hour windows when the phone is active and if it
3 terminates any less than the six hours, it means someone
4 has manually disconnected it from the network either by
5 powering it off, putting it in airplane mode, and so
6 looking at these records we can see that starting at
7 8:06 AM on September 2nd the phone was no longer talking
8 to the network.

9 Q. All right. And just to clarify further, that's gonna
10 be 8:06 AM on what date?

11 A. September 2nd.

12 Q. Based on your review of the records, can you tell us
13 whether or not that is consistent with the user cutting the
14 phone off?

15 A. Correct. Like I said, generally it's -- it's mostly
16 either being powered off or going into airplane mode.

17 Q. How long does that phone stay off?

18 A. Until approximately 3:24 PM on September 4th.

19 Q. So it's off for the remainder of the day on the 2nd
20 from 8:06 AM through midnight, it's off for the entire day
21 of the 3rd?

22 A. Correct.

23 Q. And then you said it shows activity again on the 4th
24 at what time?

25 A. About 3:24 PM.

1 Q. All right. 3:24 PM. And what did you see to indicate
2 that the phone may now be activated or cut back on by the
3 user?

4 A. It reestablished a connection to the network.

5 Q. So that's 3:24 PM on the 4th, ten minutes before the
6 purchase of an airline ticket? Ten minutes before 3:34?

7 A. It was ten minutes before 3:34, yes.

8 MS. MAYES: I beg the Court's indulgence.

9 THE COURT: Take your time.

10 MS. MAYES: And I believe 158 and 157 are in
11 evidence, Your Honor. 238 is in evidence.

12 THE COURT: We -- we got kind of confused,
13 Ms. Mayes, between 238 and 239. I think the court
14 reporter is confused, too, and I just want to make
15 sure that we've got the right exhibit numbers.

16 MS. MAYES: Yes, Your Honor.

17 So I will call them out. We have 157, being a
18 cell tower map. We have 158, being a cell tower map.

19 THE COURT: Yes.

20 MS. MAYES: We have 238, being text messages with
21 the content "on my way".

22 THE COURT: Yes, got that.

23 MS. MAYES: At this time the State will also
24 offer 9 pursuant to the previous stipulation regarding
25 Verizon records.

1 THE COURT: Exhibit 9?

2 MS. MAYES: Yes, Your Honor.

3 THE COURT: Okay. I think we're straight.

4 MS. WILSON: No objection.

5 THE COURT: Okay. Admitted.

6 (State's Exhibit Number 9, Verizon records,
7 State's Exhibit Number 157, a cell tower map, and
8 State's Exhibit Number 158, a cell tower map, were
9 admitted into evidence.)

10 BY MS. MAYES:

11 Q. Can you tell us whether 237 and 26 depict a history
12 of calls between the parties, being Roselyn Cedenó and
13 Vincent Shivers?

14 A. So 26 is a list of calls between the numbers and 237
15 is text messages.

16 Q. Okay. And this would cover the approximate timeframe
17 of August 27, 2019, through September 1, 2019?

18 A. Correct.

19 Q. And if there had been any other calls from -- made
20 from the phone of Vincent Shivers to Roselyn Cedenó after
21 that text at 5:22 PM on the 1st, would it appear on the
22 Verizon records?

23 A. It would have.

24 Q. Okay.

25 MS. MAYES: State's 26 and 237, Your Honor.

1 THE COURT: Any objection other than previously
2 noted?

3 MS. WILSON: No, Your Honor.

4 THE COURT: They're admitted.

5 (State's Exhibit Number 26, list of phone calls,
6 and State's Exhibit Number 237, test messages, were
7 admitted into evidence.)

8 BY MS. MAYES:

9 Q. And then you have mentioned 245 -- I'm gonna ask
10 you about 245, but you have mentioned that the phone
11 appears to go off at 8:06 AM on the 2nd and then be
12 reactivated on the 4th at 2:34, 2:24, 3:24 PM. Can you
13 tell us whether or not there are any records that reflect
14 that as well?

15 A. So Verizon provides a data connection log and it
16 shows those connections and 245 is a printout of those
17 records from Verizon.

18 Q. And does that reflect the time gap that you've told
19 us about?

20 A. It does.

21 MS. MAYES: This would be 245 as -- for evidence
22 as well, Your Honor.

23 THE COURT: Any objection?

24 MS. WILSON: No objection.

25 THE COURT: Admitted.

1 (State's Exhibit Number 245, a Verizon data
2 connection log, was admitted into evidence.)

3 BY MS. MAYES:

4 Q. So now in evidence, State's 26 and 237, reflecting the
5 call and text history between these two parties?

6 A. Correct. These are the logs, so that's text messages,
7 the log of the text messages, and the other one is the
8 phone call log between those two numbers excerpted from the
9 Verizon records.

10 Q. All right. And now State's 245. I'm gonna ask you to
11 take a look at this. This is hard to read, so I'm gonna
12 get up a little bit closer on this.

13 A. So this is what Verizon labels a TDR record and it's
14 a lot of information. This first column is the start time
15 of the connection, end time of the connection, this is
16 gonna be the mobile ID number, which is generally the phone
17 number of the account, how much data was transferred, and
18 then all of these different things have to deal with the
19 network and the address assigned by the network.

20 Q. All right. And looking at this, Sergeant Travis, can
21 you tell us where you see that gap in time to indicate that
22 the phone is off?

23 A. So if you -- you've got -- here's the 4th and here's
24 the 2nd, so you can see there's nothing in between, and
25 there's another data record that had an 8-27 log. That is

1 where we got the 8-27 time from.

2 Q. All right. And then do you see 8:06 AM indicated on
3 here as well?

4 A. I believe that's from the other file.

5 Q. Okay. And are there multiple files that you referred
6 to in reaching your conclusions?

7 A. Correct. Because they have different data connection
8 logs for different types of data connections.

9 Q. All right.

10 MS. MAYES: So, Your Honor, for evidence
11 State's 245, 26, 237, 238 and 9.

12 THE COURT: All admitted. I've got them all
13 written down.

14 MS. MAYES: Nothing further of Sergeant Travis
15 at this time.

16 THE COURT: Ms. Wilson.

17 MS. WILSON: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. WILSON:

20 Q. Good afternoon, Mr. Travis -- or Sergeant Travis.

21 A. Good afternoon.

22 Q. My name's Alissa Wilson and I'm representing
23 Mr. Shivers. So Verizon has different types of call detail
24 records, correct?

25 A. So Verizon sends different files. All of them

1 together ends up being the call detail record, but they
2 send individual files for each different type of
3 information; whereas, AT&T and T-Mobile send one single
4 file. Sprint also sends multiple files for each one.

5 Q. Okay. So you relied on the various records, the VOLTE
6 records, the -- I guess they're called ERLTE records; is
7 that correct?

8 A. So -- yes. So it's voiceover LTE, which is long-term
9 evolution, which is your 4G coverage. The ERLTE is
10 extended range. But they're all different types of network
11 connections, so they send a different file for each one.

12 Q. Okay. And it's my understanding, and obviously you
13 have a way deeper knowledge of these than I do, that the
14 LTE records are more accurate than the TDR records because
15 they rely on actual calls; is that correct?

16 A. I guess it depends on what you mean by accurate.
17 They're all system-recorded information, so they are an
18 accurate representation of what the network from Verizon
19 sees.

20 Q. As far as specific times, the calls are more accurate?

21 A. Again, the -- accurate means to be true or not, so
22 they're all accurate.

23 Q. Well, I guess what I'm saying is the TDR records rely
24 on -- they're a range of times; whereas, the call records
25 are a specific time the call came in or went out.

1 A. So if you're looking for specific information, yes,
2 either the -- the CDR, the LTE or the text message
3 history record would be more accurate for individual
4 communications.

5 Q. Okay. So on 9-1 you had testified that Mr. Shivers
6 received an incoming call which located near the cell tower
7 on North Lake Drive, correct?

8 A. Correct.

9 Q. And that would be consistent with him going to work?

10 A. Correct.

11 Q. And you're aware that he worked at noon on that
12 Sunday, the 1st?

13 A. I don't know what his work schedule was.

14 Q. Okay. But you -- you did locate him as being
15 consistent as going to work that day at that time?

16 A. Correct.

17 Q. And then approximately an hour later you located him
18 near Camping World, the tower near Camping World?

19 A. Correct.

20 Q. And also a phone call was captured from Rosalyn's
21 phone at 11:27 on the 1st, which located her at the
22 residence or near the residence?

23 A. Correct. In the general area, yes.

24 Q. Okay. So there would be nothing unusual about that
25 day? She would have been home, he was on his way to work,

1 correct? As far as --

2 A. Right. I mean, nothing stands out about that.

3 Q. Okay. You had stated that the records of the -- that
4 there were no other calls for the defendant after that
5 11:27 call --

6 A. On the 1st.

7 Q. -- on the 1st.

8 A. So on the call detail records, there was no other
9 calls. The 12:38, it shows a zero -- zero time connected,
10 so it connected to the tower, but there was no actual trans
11 -- transaction because it was zero time.

12 Q. Okay. And after that there were no further calls?

13 A. Not on the 1st.

14 Q. And that was any calls at all. Not just missed calls.
15 He just had zero calls that day?

16 A. That the -- that the network recorded.

17 Q. Okay. But he did text Ms. Cedeno later at 5:22,
18 correct?

19 A. Correct.

20 Q. And that he was saying he was "on his way"?

21 A. Correct.

22 Q. Which we could interpret that he was on his way home
23 from work?

24 A. Correct. I would -- I would assume based on my
25 experience that "on my way" just means from wherever you're

1 at that's where I'm heading to.

2 Q. And then you had testified that using those TDR
3 records that from 8:06 on -- 8:06 AM on the 2nd till 3:34
4 on the 4th, there was a gap in the cell phone activity,
5 correct?

6 A. It was between the -- the different data connection
7 records. The only ones that she showed were the TDR
8 records.

9 Q. Okay. But there was that gap in the time?

10 A. Correct.

11 Q. And you had said that was consistent with the phone
12 being off or in airplane -- well, you said it was mostly
13 consistent with the phone being off or in airplane mode?

14 A. Right. It's consistent with it not talking to the
15 network.

16 Q. So could that also be consistent with him being in a
17 place where there's no cell phone signal?

18 A. It could be.

19 Q. Are there other reasons that that wouldn't connect to
20 the towers?

21 A. There's no power to the phone.

22 Q. Okay. So if the phone died it wouldn't connect?

23 A. Correct.

24 Q. Okay. From the records that you received from
25 Verizon, did you notice any other dates where his phone was

1 -- was in that situation? Where it was either off, in
2 airplane mode, dead or in a place with no signal?

3 A. I didn't notice any other long periods of -- of time
4 between when there was no connection.

5 Q. Do you have those VOLTE records in front of you?

6 A. The -- I have the TDR records, I have text message
7 content.

8 MS. WILSON: May I approach?

9 THE COURT: You may.

10 THE WITNESS: These are excerpts so I don't think I
11 have -- this is the TDR. This is the only one that's --

12 MS. WILSON: Okay.

13 THE WITNESS: -- that's not an excerpt.

14 BY MS. WILSON:

15 Q. If I give you some records, would that refresh your
16 memory?

17 A. Sure.

18 MS. MAYES: And these are all subject to
19 stipulation prior.

20 THE COURT: Is that right, Mr. Swerling?

21 MS. WILSON: Yes.

22 MR. SWERLING: Yes.

23 THE COURT: Okay.

24 MR. SWERLING: I'm sorry. I didn't let you respond.

25 Sorry, Judge.

1 BY MS. WILSON:

2 Q. Okay. So if we look at these records on 8-27 at 6:55,
3 which on the records it says 22:55, but we have to subtract
4 four hours, it appears that a call was missed at that time,
5 correct?

6 A. Yes. It appears it was forwarded to voicemail.

7 Q. Okay. So that would -- that would indicate one of
8 those conditions? It was off, it was in airplane mode or
9 it was in a place with no signal?

10 A. Correct.

11 Q. Okay. And then on the 28th there's a call that's at
12 11:00, but, again, we have to subtract, so 7 AM. There's
13 a call at 7:43 AM and a call at 10:14 AM, all which were
14 missed on the 28th. So, again, either -- well, is that
15 accurate?

16 A. Correct. Not connected to the network.

17 Q. Okay. So there -- that was a time range there for at
18 least three hours where it was not connected to the network
19 on the 28th?

20 A. Correct, but three hours to me would not be an
21 extended period of time on cell phone networks.

22 Q. Okay. But it shows his phone was in one of those
23 situations for that period of time. Either off, in
24 airplane mode or not connected.

25 A. You'd need more than just the one CDR for that to say

1 for sure because there's other ways besides just getting
2 phone calls.

3 Q. Okay. But it's -- these records show that it was
4 off for these -- he missed these calls. They were not
5 connected to the network?

6 A. Correct. Well, he didn't get the phone calls.
7 It's supposition to say because he wasn't connected to
8 the network. See, there's -- you have to look at the
9 totality of all the files to see -- to make that kind
10 of determination that it wasn't connected for any length
11 of time; otherwise, you could just say he could have --
12 like I said, he could have went through a bad spot on one
13 way and then a bad spot on another. It's not a day and a
14 half, two-day period with no connection to the network.

15 Q. But it's a three-hour period with no connection to a
16 network.

17 A. It could have been connected, reconnected, not
18 connected, reconnected because it only gets the network
19 when the call comes in. You don't know that for that whole
20 period it wasn't connected is what I'm getting at. So,
21 yes, these calls were missed, but you can't say it wasn't
22 connected during the entire period.

23 MS. WILSON: I beg the Court's indulgence.

24 THE COURT: Take your time.

25 BY MS. WILSON:

1 Q. But it does show that he missed these calls on that
2 day?

3 A. He did miss these calls.

4 Q. Okay. Isn't it also true that when you're looking at
5 these records you want to establish patterns?

6 A. Yes.

7 Q. And wouldn't you want to have more -- more data to
8 analyze rather than less data; is that correct?

9 A. More data is always better than less data, yes.

10 Q. Okay. So you submitted a search warrant to obtain
11 these records?

12 A. I did not. Another officer did.

13 Q. Another officer did though?

14 A. Uh-huh.

15 Q. And that search warrant requested data from
16 August 27th until the present; is that correct?

17 A. That's my understanding.

18 Q. Okay. But any data obtained after the 5th would be
19 of no evidentiary value because Mr. Shivers was arrested on
20 the 5th; is that correct?

21 A. It's just whatever data the network captures is from
22 the point of the search warrant back to the 27th they would
23 send.

24 Q. But once he's arrested his phone is seized from him,
25 so it wouldn't show you any pattern?

1 A. I have no idea if -- if it was seized or not.

2 Q. Isn't it -- isn't the case usually when someone is
3 arrested wasn't their phone seized from them?

4 A. Again, that's something I can't testify to. I'm not
5 -- I've not been in that position. I didn't arrest him.
6 I don't know if his phone was seized. I don't know if he
7 had his phone or not.

8 Q. You don't have knowledge as an officer that when
9 someone's arrested their phone is seized from their person?

10 MS. MAYES: Objection, Your Honor. One, it calls
11 for speculation and, two, this has been a sequestered
12 witness.

13 THE COURT: Reword it.

14 MS. WILSON: Okay.

15 BY MS. WILSON:

16 Q. Are you -- did you receive police training?

17 A. I did.

18 Q. Did you receive training about when someone is
19 arrested?

20 A. Sure.

21 Q. So when someone's arrested, isn't it procedure to take
22 their phone from their person?

23 A. It is, but it's not always followed.

24 Q. Do you have knowledge that Mr. Shivers had his phone
25 with him after he was arrested?

1 A. I don't have knowledge about anything about whether he
2 had or didn't have his phone. That's what I keep telling
3 you.

4 Q. Okay. We'll move on.

5 Mr. Shivers was arrested on the 5th, correct? Are you
6 aware of the date he was arrested?

7 A. I'm not aware of the date he was arrested.

8 Q. Okay. Anyway, so the search warrant obtained
9 approximately nine days of data prior to the event. It
10 was from August 27th until the present, which was sometime
11 in September?

12 A. Yes.

13 Q. So wouldn't it have been a better practice to request
14 at least a month's worth of data prior to September 1st?

15 A. Generally, again, like you said, the more data the
16 better; however, it comes down to whoever wrote the search
17 warrant feeling comfortable in the probable cause they
18 presented for the range of date they were trying to get.

19 Q. I mean, to establish a pattern using five days of data
20 doesn't establish much of a pattern, does it?

21 A. It makes it harder, yes.

22 Q. It makes it very hard to establish a pattern in five
23 days; isn't that correct?

24 A. It makes it hard, yes.

25 Q. You said Mr. Shivers's phone turned back on on 9-4 at

1 3:24; is that correct?

2 A. Uh-huh.

3 Q. Were you able to map that location?

4 A. No, I was not.

5 Q. Why not?

6 A. Because the data connections don't give accurate
7 location information to it. It just tells you when it's --
8 when it's connecting to a network.

9 Q. So those -- those connections don't give accurate
10 location information?

11 A. Correct.

12 MS. WILSON: I beg the Court's indulgence.

13 THE COURT: Take your time.

14 MS. WILSON: That's all. Thank you.

15 THE COURT: Any redirect?

16 MS. MAYES: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. MAYES:

19 Q. Sergeant Travis, for a person who is travelling from
20 Columbia, South Carolina, to New York, would you expect a
21 phone to have access to a tower signal?

22 A. Yes.

23 Q. Why or why not?

24 A. The first place that phone companies built towers was
25 along the interstate, so interstates have the best coverage

1 of any area usually, along with major metropolitan areas.

2 MS. MAYES: Thank you.

3 Nothing further.

4 MS. WILSON: No further questions.

5 MS. MAYES: May we approach?

6 THE COURT: You may.

7 And can I let Sergeant Travis be excused?

8 MS. MAYES: Yes, Your Honor. We ask that he be
9 excused.

10 THE WITNESS: Thank you, ma'am.

11 (Witness excused.)

12 (Proceedings held at the bench; not reported.)

13 THE COURT: All right, Mr. Foreman. I'm gonna
14 let y'all go stretch your legs. I need to stretch
15 mine. Let's take a quick fifteen-minute break. They've
16 got to get something together for the next witness and
17 we'll come back, okay?

18 FOREPERSON: Yes.

19 THE COURT: No talking about the case.

20 (Whereupon, the jury retires to the jury room at
21 3:43 PM.)

22 THE COURT: We're gonna be in recess for fifteen
23 minutes, all right? We'll be back at 4:00.

24 (Recess taken at 3:43 PM.)

25 (Back on the record at 4:02 PM.)

1 THE COURT: All right. Can I bring the jury back
2 in?

3 MS. MAYES: Yes, Your Honor.

4 THE COURT: Let's bring them in.

5 (Whereupon, the jury return to the courtroom at
6 4:02 PM.)

7 THE COURT: Mr. Foreman, the jury ready?

8 FOREPERSON: We are.

9 THE COURT: Okay. You can call your next witness.

10 MS. MAYES: The State calls Jana Weaver. Agent
11 Jana Weaver.

12 (Whereupon, Jana Weaver was duly sworn by the
13 Clerk of Court.)

14 THE CLERK: If you'll have a seat over there and
15 if you'll spell your name for the record.

16 THE WITNESS: My name is Jana, J-A-N-A, Weaver,
17 W-E-A-V-E-R.

18 JANA WEAVER,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. MAYES:

22 Q. All right. Now the first thing I'm gonna do --

23 MS. MAYES: Your Honor, if I may approach?

24 THE COURT: You may.

25 MS. MAYES: I'm gonna move this over and a little

1 bit closer to you and I'm gonna ask you to speak directly
2 into the microphone.

3 BY MS. MAYES:

4 Q. Tell us a little bit about yourself. Where are you
5 currently employed?

6 A. I work at the South Carolina Law Enforcement Division,
7 also known as SLED.

8 Q. All right. How long have you been with the state
9 crime lab at SLED?

10 A. Just over eight years.

11 Q. Tell us about your educational background and
12 training.

13 A. I have a bachelor's of science degree in criminal
14 justice. I had to complete SLED's in-house firearms
15 examiner training program. That's an extensive program.
16 It covers a few years. A bunch of reading, writing,
17 written and oral examinations, a bunch of hands-on
18 practices and practicals, a cumulative final, mock court
19 -- mock cases at the end of our training and a competency
20 test to make sure we can do the job.

21 I've completed multiple Glock armorers courses. I
22 have completed the Bureau of Alcohol, Tobacco, Firearms
23 and Explosives serial number restoration courses, as
24 well as their NIBIN or the National Integrated Ballistic
25 Identification System training program, as well as their

1 national trainer program that allows me to train nationally
2 for -- for that database.

3 Q. Now what division are you assigned to there at the
4 state crime lab?

5 A. I'm in the firearms section.

6 Q. How long have you worked as an examiner in the
7 firearms department?

8 A. Just over six years.

9 Q. Can you tell us whether you have testified previously
10 as an expert in the field of firearms analysis?

11 A. Yes, I have. Seven times.

12 Q. And can you tell us whether that study, that field
13 of study of firearms, includes any unique markings, tool
14 marks, things of that nature, that are on casings and fired
15 projectiles after a gun has been used?

16 A. Yes, that -- that is the basis of our job and our
17 examinations that we perform.

18 Q. Can you tell us whether or not your prior testimony
19 as an expert has included testimony regarding these unique
20 markings?

21 A. They have.

22 MS. MAYES: Your Honor, at this time the State
23 offers Jana Weaver as an expert in the field of firearms
24 analysis.

25 THE COURT: Any objection?

1 MS. BARBIER: No objection.

2 THE COURT: All right. Ladies and gentlemen,
3 she's qualified as an expert in firearm analysis. That
4 doesn't mean you have to accept her opinion, but it's
5 evidence for you to use in any way you see fit.

6 Go ahead, Ms. Mayes.

7 BY MS. MAYES:

8 Q. Tell us a little bit in general about the field of
9 study of firearms and how markings on fired projectiles
10 and fired casings help aid a firearms examiner such as
11 yourself.

12 A. Essentially, when a firearm is fired, it will leave
13 fingerprints, if you will, on the cartridge cases and/or
14 the bullets by the force, the manufacturing techniques and
15 the metals scraping each other as the bullet goes down the
16 barrel and as the cartridge case hits the metal what we
17 call breech face inside the firearm when -- as it is being
18 fired.

19 Q. Can you tell us whether these markings allow a
20 firearms examiner to determine what type of weapon may have
21 been used to commit any particular crime?

22 A. There are certain examinations that we can do
23 specifically on bullets that are fired. We can measure the
24 lands and grooves on the bullets with our microscopes and/or
25 a -- I'm sorry, I'm drawing a blank here -- we have the

1 tools to measure the lands and grooves and we have access to
2 a database in our professional organization that we can put
3 in those measurements with the number of lands and grooves
4 and they either go left or they -- or right out of the
5 barrel. We put all that information in and it can give us
6 a list of manufacturers. We can go as far as the models,
7 specific types of just pistols or revolvers, things of
8 that nature, but it will generate a list for us with
9 manufacturers on there as to what types or manufacturers
10 may have fired specific -- that specific bullet.

11 Q. Now can you tell us whether this database is used by
12 other examiners at the State Law Enforcement Division as
13 well?

14 A. We all use this one. Actually everybody that is an
15 AFTE member, the Association of Firearm and Tool Mark
16 Examiners, around the world use the database.

17 Q. And can you tell us whether or not that includes the
18 FBI?

19 A. Yes.

20 Q. I'm gonna show you what is State's 1, already in
21 evidence, and ask you to take a look -- you may don your
22 gloves -- ask you to take a look at the items contained
23 therein.

24 A. (Witness complies.)

25 Q. Do you recognize those items?

1 A. I'm just looking for -- when we examine bullets and
2 cartridge cases, we will scribe the lab number, item
3 numbers and our initials on there so that we know that is
4 what we looked at. I'm just making sure.

5 Yes, I did. I did examine these.

6 Q. All right. And can you tell us what actually you are
7 looking at there? Are those casings or projectiles?

8 A. These are fired cartridge cases.

9 Q. All right. And how many of them are there?

10 A. Seven.

11 Q. Can you tell us based upon your examination of any
12 unique marking whether or not those casings were all fired
13 by the same gun?

14 A. It is my opinion that they were all fired by the same
15 firearm.

16 Q. I'm gonna ask you to go back and tell us the number
17 that is on the outside of that envelope.

18 A. This -- the big envelope?

19 Q. Yes.

20 A. It's State's Exhibit 1.

21 Q. All right. And you have indicated seven casings?

22 A. Yes.

23 Q. What is it, Agent Weaver, about these fired casings
24 that allow you to make that determination that they were
25 all fired by the same gun?

1 A. We look at the microscopic marks that are left on the
2 -- the primer and the cartridge case when it's fired as I
3 stated before and we look at it through a comparison
4 microscope so basically we are able to put two cartridge
5 cases, if you will, up there at the same time and compare
6 them microscopically and we're looking for matching lines,
7 if you will, and our training is so extensive because we
8 learn how much we need to -- to have a match and to -- how
9 much -- how much match you can have there or how much
10 similarities you can have and it still may not be able to
11 be conclusive.

12 Q. But in this case it was?

13 A. In this case it was, yes.

14 Q. All right. Now I'm gonna ask you to take a look at
15 what is marked as State's 132 and ask you whether or not
16 you recognize what is depicted in that photograph?

17 A. I do.

18 Q. And who took this photograph?

19 A. I did.

20 Q. All right. And did you include this in your SLED
21 bench notes?

22 A. Yes.

23 Q. And can you tell us what is depicted in this
24 photograph?

25 A. That is the head stamp areas of the seven cartridge

1 cases.

2 Q. The seven cartridge casings that we just looked at in
3 Envelope Number 1?

4 A. That is correct.

5 MS. MAYES: This would be 132 for evidence, Your
6 Honor.

7 THE COURT: Any objection?

8 MS. BARBIER: No objection.

9 THE COURT: It's admitted.

10 (State's Exhibit Number 132, a photograph, was
11 admitted into evidence.)

12 BY MS. MAYES:

13 Q. What can you tell us about the make and manufacturer
14 of all seven spent cartridge cases, Agent?

15 A. Those are -- High Precision Range is the manufacturer
16 and they are 45 auto caliber cartridge cases.

17 Q. And what type of outer casing?

18 A. It's a brass cartridge case.

19 Q. Now just as you told us in working with fired casings,
20 are you able to always make a determination as to
21 projectiles or the bullets that have been fired?

22 A. Not always.

23 Q. And why or why not? What kind of damage may occur to
24 projectiles?

25 A. Any type of damage. You know, it can hit anything.

1 We commonly see it hit walls, you know, the ground or cars.
2 We've seen, you know, it hit bone. Things of that nature
3 can damage a bullet to where it kind of abrasively adds
4 marks, I guess, to -- over -- over the marks that we need
5 to use could damage it and push it into like a flat piece
6 of metal or it can fragment it, things of that nature.

7 Q. All right. So as a result, are you always able to
8 make a determination as to whether projectiles are all
9 fired from the same gun?

10 A. No, we -- there's some times where we're not able to.

11 Q. Okay. I'm gonna ask you to take a look at what is
12 marked State's 2 and ask you what contents are contained
13 here?

14 A. I have seven fired bullets or projectiles.

15 Q. And you spoke of damage. I'm gonna show you what is
16 15 -- I'm sorry, 207, depicting Marker 15, as well as 72,
17 depicting Marker 65. Does it appear there is damage to
18 those fired projectiles?

19 A. There are -- there is damage to the -- the nose area,
20 there is damage. Yes, there is damage to the -- the
21 bullets.

22 Q. As a result, were you able to make a determination as
23 to whether all seven projectiles were fired by the same
24 gun?

25 A. May I look at my notes?

1 Q. Sure.

2 THE COURT: She wants to look at her note.

3 Is anybody objecting?

4 MS. BARBIER: Your Honor, is she looking at her
5 notes or the report that she made?

6 THE WITNESS: Just the report.

7 MS. MAYES: And for the record, her notes --
8 her entire bench notes have been part of discovery
9 previously in this case.

10 THE COURT: Okay. Thank you.

11 THE WITNESS: I have that although similarities
12 were noted, there was not enough information or marks
13 that we look at on these bullets to determine if they
14 were fired by one firearm or multiple firearms.

15 BY MS. MAYES:

16 Q. But you indicated you received seven projectiles for
17 analysis?

18 A. Yes.

19 Q. And seven casings?

20 A. Correct.

21 Q. I want to go back for a moment to the head stamps that
22 you noted, what is depicted in State's 132 here. I'm now
23 gonna show you what is State's 74 and ask you to look at
24 State's Exhibit 12.

25 Looking at State's 12, can you tell us what, if

1 anything, is noted on the outside of that packaging?

2 A. Would you like for me to read what's on the packaging?

3 Q. Yes. If you could identify that, please.

4 A. It has a case number, Item 14, cartridge case
5 abbreviated from dresser top, 216 Carriage Hall {sic} Court
6 in Lexington, South Carolina.

7 Q. All right. From dresser top. I'm gonna ask you to
8 take a look at the head stamp on that particular item and
9 tell us whether or not you see any similarities to the head
10 stamps on the fired casings that you have already examined?

11 A. It is HPR 45 auto, which is consistent with what I was
12 given to examine.

13 Q. And the outer casing?

14 A. It is brass.

15 Q. I'm next gonna take a look at State's 91.

16 Now I'm gonna show you what is marked as State's 11
17 and ask you what is written on the outside of the bag as
18 to location and type of item.

19 A. It says magazines, in parentheses two, Springfield
20 Armory, with ammo.

21 Q. All right. Can you tell us what is contained -- where
22 it was recovered?

23 A. I want to say MB closet.

24 Q. Okay. MB closet?

25 A. I believe so.

1 Q. And you said that's two magazines?

2 A. Yes.

3 Q. And is there any additional information as to the make
4 of those magazines?

5 A. It says Springfield Armory.

6 Q. All right. I'm gonna ask you to take a look at what's
7 contained therein.

8 All right. Starting with the first magazine, can you
9 tell us what type of ammunition is contained and how many
10 rounds?

11 A. There are twelve unfired HPR 45 auto caliber
12 cartridges.

13 Q. And the second magazine and the outer casing on those?

14 A. That magazine also has twelve unfired HPR 45 auto
15 caliber cartridges.

16 Q. All right. And the outer casings, if you could
17 describe?

18 A. They are brass cartridge cases.

19 Q. All right. And the previous magazine?

20 A. They were also brass.

21 Q. Okay. Now I'm gonna ask you to take a look at
22 State's 90 and State's 192. Can you tell us whether or not
23 the outer package indicates where this item was located?

24 A. MB closet from black luggage.

25 Q. And what item is contained therein?

1 A. I'm sorry?

2 Q. What item is inside that bag?

3 A. It is an HPR brand -- ammunition brand box with
4 thirty-six unfired 45 auto caliber cartridges and there is
5 a mixture of manufacturers on the head stamps.

6 Q. All right. And so, to clarify, inside this box are
7 thirty-six unfired rounds and the thirty-six unfired rounds
8 are a combination or mix of various brands?

9 A. Correct.

10 Q. So inside the box they're not all HPR's?

11 A. That is correct.

12 Q. But the box itself is for the HPR's?

13 A. Yes.

14 Q. Now looking here, can you tell us whether or not the
15 outside of the box indicates what caliber that box was --
16 that box originally held?

17 A. It says 45 auto caliber.

18 Q. Okay. Now I'm gonna ask you about some additional
19 ammunition. This being State's 188.

20 And, first, before you get started, let me ask you
21 this. Did you receive from the Lexington County Sheriff's
22 Department a Kimber 45 that had been recovered from a
23 vehicle?

24 A. I did.

25 Q. And did you have the opportunity to test that Kimber

1 45 to see if the Kimber 45 is the gun that fired those
2 seven casings?

3 A. I was able to test-fire the pistol and do comparisons.

4 Q. Okay. And tell us what you were able to determine
5 regarding that Kimber 45 and those seven casings?

6 A. Due to differences in the rifling, the left or the
7 right that I was speaking about earlier, the bullets were
8 not fired by that firearm. The cartridge cases, due to
9 differences in individual identifying characteristics, they
10 were also not fired by that firearm.

11 Q. Okay. So the Kimber 45 from the vehicle is not the
12 gun that fired those seven casings, correct?

13 A. That is correct.

14 Q. And I'm gonna ask you to take a look here at
15 State's 188 and tell us what, if any, markings are on the
16 outside of that package indicating where that ammunition
17 came from.

18 A. Ammunition from Kimber magazine.

19 Q. Okay. Now inside that Kimber magazine, can you tell
20 us what type of ammunition did it contain?

21 A. There were seven total 45 auto caliber cartridge cases
22 -- I'm sorry, cartridges, unfired cartridges. Two of them
23 had a Federal manufacturing brand head stamp and five had
24 the HPR head stamp.

25 Q. All right. So five had the HPR and I know you said

1 HPR head stamp, but one more time, HPR what caliber?

2 A. 45 auto.

3 Q. And can you tell us about the outer casing?

4 A. They -- all seven are brass.

5 Q. All right. All of these different unfired rounds that
6 you have testified to, the one from the dresser, the ones
7 in the magazines, in the ones from the Kimber, can you tell
8 us whether or not they were all consistent with the make
9 and manufacturer of the brand found at the crime scene?

10 A. Other than the two of the seven out of the Kimber
11 magazine, they all have the HPR head stamp on them.

12 Q. Okay. So you received the Kimber, you were able to
13 test it and rule it out.

14 Now I'm gonna ask you about State's 6. What can you
15 tell us is written on the outside of this packaging for
16 State's Exhibit 6?

17 A. It says gun box, Springfield Armory, XD-45.

18 Q. All right. Now we're gonna take a look at State's 89
19 in evidence. What is this label on the outside of this box
20 in State's 89?

21 A. Did you want me to read what's on --

22 Q. Yes. What is the label? What's the purpose of the
23 label?

24 A. These labels are put on by the manufacturers to let
25 the customers and the dealers know what make, model, the

1 serial number, the calibers. There's also their barcodes
2 on there, you know, for use in the stores.

3 Q. Okay. And, in particular, if you could, and you can
4 use the naked eye instead of the projector, tell us what
5 information you have on State's Exhibit 6 regarding its
6 serial number and its make and model.

7 A. This has Springfield Armory XD-45 ACP, which is also
8 -- it's an automatic Colt pistol. The 45 auto is short for
9 45 ACP. It says black pistol and then it has a serial
10 number of US647148.

11 Q. All right. So the model then would be a Springfield
12 XD and the caliber?

13 A. 45 auto.

14 Q. Looking here at 88, Agent Weaver, did you receive a
15 gun for analysis in this case that was a Springfield XD-45?

16 A. No, I did not.

17 Q. And with being a missing gun, how do you go about
18 making a determination as to whether those seven casings
19 could have been fired by this gun, which is missing?

20 A. We -- since I don't have a firearm, I don't have test
21 fires to use to compare to the cartridge cases, so I don't
22 know whether or not they were fired by the firearm.

23 Q. All right. How do you go about making a determination
24 as to whether or not this firearm is consistent with the
25 measurements you saw on the fired projectiles from the

1 crime scene?

2 A. When I measured the bullets for the land and groove
3 impression widths to put into a database, Springfield
4 Armory XD did show up on the list of possible makes and
5 models of firearms that could have fired those bullets.

6 Q. Okay. So I'm gonna ask you a few more questions about
7 that. Now is there any way to know for sure how many
8 magazines may have originally come with this gun?

9 A. No, not by looking at that.

10 Q. And looking here at State's Exhibit 6, when we talk
11 about magazines, can magazines for firearms be purchased on
12 the free market?

13 A. They can. They can be purchased online, in stores or
14 at gun shows, things like that.

15 Q. You mentioned gun shows. If someone goes to a gun
16 show, can they buy accessories such as magazines?

17 A. Yes.

18 Q. And ammunition?

19 A. Yes.

20 Q. What about other forms of sale, such as private
21 transactions, hand-to-hand sales?

22 A. That is allowed at gun shows in South Carolina.

23 Q. Okay. So would it be possible to acquire additional
24 magazines and ammunition for a gun outside of the original
25 distribution of that firearm?

1 A. Yes.

2 Q. So regarding this UPC code, a Springfield XD-45, what
3 can you tell us about those fired projectiles, I believe
4 that was State's 2, being the seven fired projectiles? Did
5 you measure these?

6 A. I did.

7 Q. In addition to measurements, did you examine them
8 microscopically for markings?

9 A. Yes, I did.

10 Q. What can you tell us about those projectiles, those
11 fired bullets recovered from the crime scene, in relation
12 to that missing Springfield XD-45?

13 MS. BARBIER: Objection, Your Honor.

14 THE COURT: What's the basis for the objection?

15 MS. BARBIER: She's mischaracterizing the status
16 of the Springfield weapon. It's not necessarily missing.
17 It's just they don't -- they don't have it.

18 MS. MAYES: I believe that would be missing, Your
19 Honor. It is not present in this courtroom and it's
20 not been recovered pursuant to the investigation and
21 it's listed in NCIC as a missing firearm.

22 THE COURT: I'm gonna let you go ahead.

23 MS. MAYES: Okay.

24 BY MS. MAYES:

25 Q. What can you tell us about those fired projectiles

1 from the crime scene in relation to the Springfield XD-45?

2 A. When I -- when I did the measurements, I put them
3 into the database and the list that was generated for me,
4 Springfield XD was on the list. It's consistent with the
5 rifling in a Springfield XD-45 auto caliber firearm.

6 Q. All right. That is among the firearms consistent with
7 the projectiles from the crime scene?

8 A. That is correct.

9 MS. MAYES: I beg the Court's indulgence.

10 THE COURT: Take your time.

11 MS. MAYES: Your Honor, that is all from Agent
12 Weaver at this time. We did have that one exhibit,
13 the photograph, and I believe that is now in evidence,
14 132.

15 THE COURT: Okay. We've got it marked down.

16 Ms. Barbier.

17 MS. BARBIER: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. BARBIER:

20 Q. So good afternoon, Agent Weaver. I'm Debbie Barbier.
21 I'm representing Mr. Shivers.

22 So what I have heard you tell this jury -- and you've
23 been -- you've been qualified as an expert in firearms
24 identification, correct?

25 A. Yes, ma'am.

1 Q. Okay. And what I've heard you tell this jury is the
2 gun that was retrieved from Mr. Shivers's car, the -- the
3 Kimber gun, is not the gun that fired the bullets that
4 killed Ms. Ceden0; is that correct?

5 A. That is correct.

6 Q. Okay. Now you also have told this jury that -- if
7 I understand it correctly, that the casings that you
8 looked at and I think you identified in this case was
9 5 through 11 in your report, you were able to conclude,
10 if I'm correct, that those casings were fired from the
11 same firearm, correct?

12 A. Correct. They were all fired by one firearm.

13 Q. Okay. You cannot identify the actual firearm that
14 fired those casings though, can you?

15 A. Correct.

16 Q. Okay. And you also concluded in your report that
17 bullets -- or casings 12 through 17 and 19 were physically
18 examined and microscopically compared and you cannot say
19 that those are the -- are the same -- were fired from the
20 same gun as casings 5 through 11, correct?

21 A. That is correct. We -- that is an examination we
22 don't do. We're not able to tell whether bullets were
23 fired by the same firearm as a cartridge case.

24 Q. So what you testified is that you cannot identify the
25 gun that shot these bullets, correct?

1 A. Correct.

2 Q. Okay. And you cannot say that they were even fired
3 from the same gun, can you?

4 A. The bullets, yes, that is correct.

5 Q. Okay. Meaning that there is a distinct possibility
6 that there was more than one firearm used in this crime; is
7 that correct?

8 A. And that is possible. I did note that there were some
9 similarities, but there wasn't enough to -- to be able to
10 determine they were all fired by one firearm.

11 Q. And you indicated in your direct examination that you
12 generated a list and there was a list of firearms that
13 could have fired these bullets, correct?

14 A. That AFTE generates the -- the program generates the
15 list.

16 Q. Okay. And that list is quite long, isn't it?

17 A. I've definitely seen longer lists.

18 Q. Okay. But there are -- I think in your most recent
19 search, you identified thirty-three other guns that it
20 could have been. Springfield was -- there's two types of
21 Springfields on that list, but there are thirty-one other
22 guns it could have been as well, correct?

23 A. Correct.

24 Q. In fact, it could have been a 45 automatic
25 Auto-Ordnance Model 1911?

1 A. I'm gonna check mine.

2 Q. Sure. Refer to your list when you need to.

3 A. That way I can keep up with you. Okay.

4 Q. So let me ask you first so we're on -- to see if we're
5 on the same sheet of page. In your report, you've listed
6 some guns that it could have been. Do you see that?

7 A. Yes.

8 Q. Okay. Is this a more updated list?

9 A. It is the same list. When we put it in the report, we
10 just put the manufacturers in the report to cut down on the
11 list. You can tell in the second list that we have there
12 are multiple manufacturers listed with the model next to
13 it.

14 Q. Right. So in your report there are twenty-three guns
15 listed as being the possible weapon that fired these
16 bullets, correct?

17 A. Correct.

18 Q. Okay. And as I said, you concluded by running this
19 search that it could have been a 45 automatic Auto-Ordnance
20 Model 1911; is that right?

21 A. Yes.

22 Q. It could have been a 45 automatic Cesca Zbrojovka
23 Model CZ97B; is that right?

24 A. Yes.

25 Q. That looks like a -- a Russian name or something.

1 A. I do know its --

2 Q. A 45 automatic Czechoslovakia TT-45; is that right?

3 A. Yes.

4 Q. Okay. It could have been a 45 automatic Firestorm
5 mini compact?

6 A. Yes.

7 Q. Okay. It could have been a 45 auto Haskell JS-45; is
8 that right?

9 A. Yes.

10 Q. It could have been a 45 automatic Hi-Point Firearms
11 Model JH?

12 A. Yes.

13 Q. It could have been a 45 automatic Intertek Category
14 45?

15 A. Yes.

16 Q. It could have been a Llama and the unknown model
17 number?

18 A. Yes.

19 Q. It could have been a Llama Especial?

20 A. Yes.

21 Q. It could have been a Llama Max-I45 CF?

22 A. Yes.

23 Q. Okay. It could have been a Llama I45 LF?

24 A. Yes.

25 Q. It could have been a Llama Minimax?

1 A. Yes.

2 Q. It could have been a Llama Omni?

3 A. Yes.

4 Q. It could have been a Military Arms Corp Model M10A1?

5 A. Yes.

6 Q. It could have been a Rock Island Armory M1911-A1 CS;
7 is that right?

8 A. Correct.

9 Q. And then there's five different types of Ruger guns
10 that it could have been. An American, a KP90, a P345, a
11 P90 or a P90 DC. Do you see that?

12 A. Yes, ma'am.

13 Q. So all five of those Rugers could also be the possible
14 murder weapon, correct?

15 A. Correct.

16 Q. And then we have in the list it could have been a
17 Shooters Arms Manufacturing Blue Thunder model?

18 A. Yes.

19 Q. And there's five Smith & Wesson models that it could
20 have been as well, correct?

21 A. That's correct.

22 Q. A 25 Target, a 457, a 745, an M&P 45 and SW 1911; is
23 that right?

24 A. Yes, ma'am.

25 Q. Okay. And then you've got two Springfields on the

1 list. A Springfield XD-45 and a Springfield XD-45

2 subcompact Model 2. Do you see that?

3 A. Yes.

4 Q. Okay. So when you indicated that it could have been a

5 Springfield firearm, you didn't specify which model. Is

6 there a distinction there or could it have been either one?

7 A. It can -- it can be either one.

8 Q. Okay. And then it also could have been a Star Model

9 PS?

10 A. Yes.

11 Q. And then two different types of Tanfoglio -- am I

12 saying that right --

13 A. Tanfoglio.

14 Q. -- guns and their model number Witness?

15 A. Yes.

16 Q. And then a Taurus 247G2?

17 A. Yes.

18 Q. And a Tisas C45; is that right?

19 A. That is.

20 Q. And you would agree with me that there's also some

21 other guns that aren't on this list that also could have

22 fired those bullets as well; isn't that right?

23 A. It is possible.

24 Q. Okay. So there are millions of guns literally out

25 there in this world that could have fired the bullets that

1 were at that crime scene, correct?

2 A. This is possible.

3 Q. Okay. And let's talk about the bullets for a minute
4 because would you agree with me that a 45 automatic gun is
5 a -- is a quite popular weapon?

6 A. It is.

7 Q. Okay. And you can buy those weapons -- you can buy
8 that ammunition at Walmart, can't you?

9 A. I'm not sure about the HPR.

10 Q. Okay. How about Sports Academy?

11 A. I'm sure they have it at -- more like a sporting -- a
12 sporting goods store.

13 Q. Okay. Would you agree with me that there are all
14 kinds of stores online that you can buy this ammunition at?

15 A. Yes.

16 Q. Okay. And you can literally buy them at thousands of
17 retailers all around the world; isn't that right?

18 A. Yes.

19 Q. Okay. So -- they're also pretty inexpensive, aren't
20 they? It's about \$30.00 for a car -- a box of them?

21 A. I'm -- I don't -- I haven't bought ammo recently. I
22 have no idea the cost, but there's --

23 Q. Would it surprise you that 49 percent of South
24 Carolinians have a handgun?

25 A. Not at all.

1 Q. Okay. It's pretty -- we have a state where it's
2 pretty popular to own a weapon, isn't it?

3 A. Yes.

4 Q. And, in fact, most of South Carolinians that own guns
5 have them for personal protection, correct?

6 A. I -- I would imagine that's why they have them. I'm
7 not sure why everybody has -- has a firearm.

8 Q. And a whole lot of guns that are used for personal
9 protection take 45 caliber ammunition, don't they?

10 A. I'd say that, you know, a good many of them do.

11 Q. Right. And so -- let's see. This is the -- the
12 ammunition that you testified about earlier, the HPR 45?

13 A. The box, yes.

14 Q. The box, right. And -- and so -- just so we're clear,
15 this is extremely common ammunition; is it not?

16 A. No, HPR is not as common as other brands.

17 Q. But it's widely available. Would you agree with that?
18 I mean, you can buy it at Sports Academy, so wouldn't you
19 say that it's widely available?

20 A. I guess the definition of widely available -- you may
21 be able to buy it, but the amount of what they have, you
22 know, may -- may vary, I guess.

23 Q. The amount the retailer has?

24 A. The retailer, correct. Yes. In other words, this
25 ammunition is not as common as, say, Federal or Winchester

1 or Remington, things of that nature.

2 Q. But you would agree if I went online right now and I
3 Googled HPR 45 automatic bullets, I could find some pretty
4 easily, right?

5 A. Oh, I'm sure online.

6 Q. Yeah. And so this -- these markings that you
7 testified about, these are not unique. I mean, this isn't
8 a serial number. You're not trying to tell this jury that
9 these -- this -- the serial number of these bullets matched
10 something that was found in Mr. Shivers's vehicle?

11 A. The head stamp area? The HPR?

12 Q. Correct.

13 A. It's consistent with the manufacturer.

14 Q. Right, but it's not a unique marking, is it?

15 A. That's -- no, that's what the manufacturer uses on, if
16 not all, most of their ammo.

17 Q. Right. It's not a serial number, correct?

18 A. Correct.

19 Q. So there are millions of people that have HPR auto --
20 automatic ammunition; isn't that right?

21 A. It's possible.

22 Q. Okay. So that is not much of a finding, is it?

23 A. That's I don't think enough for me to -- to say.

24 Q. Okay. But one thing we are clear on is -- and you --
25 and you gave your expert opinion on this, and that is that

1 the gun that was in -- let me ask you this. This box that
2 the State has showed you, this Springfield box, this was
3 found in a closet, correct?

4 A. I believe so.

5 Q. Okay. Well, let me -- let me ask you this. You don't
6 have any personal information about when -- how long that
7 has been empty, do you?

8 A. No.

9 Q. Okay. So you don't know when, if ever, there was a
10 gun in that box, do you?

11 A. No, I don't know anything about it, but what I read on
12 the box.

13 Q. Okay. And I have a shoebox in my closet right now
14 that doesn't have any shoes in it. That doesn't mean my
15 shoes are missing or -- or have been stolen, does it?

16 A. I don't know anything about the shoes either.

17 Q. Okay.

18 MS. BARBIER: I beg the Court's indulgence.

19 THE COURT: Take your time.

20 BY MS. BARBIER:

21 Q. I believe you also testified, Agent Weaver, that two
22 of the bullets found in the Kimber firearm were not HPR
23 automatic, correct?

24 A. Correct. Two of them that were in the State's
25 Exhibit 188 marked from the magazine were not the HPR.

1 Q. And the firearm is not the firearm that fired the
2 bullets that killed Ms. Cedenno; is that correct?

3 A. That is correct.

4 MS. BARBIER: I don't have any other questions.

5 THE COURT: Any redirect?

6 MS. MAYES: Yes, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. MAYES:

9 Q. You're a gun owner?

10 A. I am.

11 Q. And you have gun boxes?

12 A. I do.

13 Q. Do you have guns that go with those gun boxes?

14 A. Yeah, I do.

15 Q. So you were asked specifically about the HPR 45 ammo
16 and how common or uncommon it is. What can you tell us
17 about that?

18 A. It's not one of the most common ammunition
19 manufacturers we see.

20 Q. Are you aware of when the HPR company stopped
21 production?

22 A. No, I am not.

23 Q. Okay. When you were asked about the list, the list
24 of potential guns that could have produced the markings
25 and measurements that you observed, how many Springfields

1 were on that list?

2 A. There were two different models of Springfields on
3 that list.

4 Q. And what was it -- what were the characteristics that
5 allowed the Springfield XD-45 to be included on that list?

6 A. The measurements. And I can read those if I need to.

7 Q. Yes.

8 A. I'll have to look in my notes. So the bullets were --
9 they had six lands and grooves with a right twist and a
10 conventional type form of rifling. The lands measurements
11 went from .07 inches to .08 -- .076 inches to .078 inches
12 and the groove width went from .149 inches to .150 inches,
13 and we measure it with a range of 5/100ths of an inch and
14 when we put that data into the database, it generates the
15 list for us of these manufacturers.

16 Q. All right. And you mentioned the right twist or the
17 left twist. What, if anything, is significant in that
18 regard?

19 A. The Kimber was left twist. The bullets had a right
20 twist.

21 Q. All right. The bullets that you examined from the
22 crime scene?

23 A. Yes.

24 Q. And what did you determine about the Springfield
25 XD-45?

1 MS. BARBIER: Objection. She determined that about
2 thirty-three other guns, too, so that's misstating her
3 testimony.

4 MS. MAYES: I can make it more general.

5 THE COURT: Thank you.

6 BY MS. MAYES:

7 Q. What did you determine about the guns on this list,
8 which included the Springfield XD-45?

9 A. The list is a list of firearms that may have possibly
10 fired those bullets.

11 Q. And that twist is?

12 A. Is right.

13 MS. MAYES: I beg the Court's indulgence.

14 Nothing further.

15 THE COURT: Ms. Barbier, anything else?

16 MS. BARBIER: Just one question.

17 RECROSS EXAMINATION

18 BY MS. BARBIER:

19 Q. The measurements that you just testified about being
20 consistent with a Springfield with respect to those
21 casings, they're consistent -- those measurements are
22 consistent with all those other guns, too, aren't they?

23 A. Yeah. The measurements were for the bullets, but,
24 yes, they were for all of the other manufacturers listed.

25 Q. Okay. So you cannot identify what of those -- which

1 of those thirty-three types of guns was used to fire those
2 bullets, correct?

3 A. That is correct.

4 MS. BARBIER: Thank you.

5 THE COURT: Thank you.

6 Anything else?

7 MS. MAYES: Your Honor, we would ask that Agent
8 Weaver be released to return to SLED.

9 THE COURT: Thank you for coming.

10 (Witness excused.)

11 THE COURT: All right. Does the State want to
12 call their next witness?

13 MS. MAYES: Your Honor, at this time the State
14 will rest.

15 THE COURT: Okay. Thank you.

16 All right. Ladies and gentlemen of the jury, I
17 probably need about fifteen minutes to take up some
18 matters with the lawyers and I'll call you back in,
19 okay?

20 No talking about the case just yet.

21 Thank y'all.

22 (Whereupon, the jury retires to the jury room at
23 4:54 PM.)

24 THE COURT: All right. The State's rested.

25 Do I have any motions from the State?

1 MS. MAYES: None from the State, Your Honor.

2 THE COURT: Anything from the defense?

3 MR. SWERLING: Your Honor, at this time the
4 defense would move for a directed verdict. Taking all
5 the evidence in the light most favorable to the State,
6 we submit that the State has failed to prove beyond
7 speculation the guilt of the defendant in this case.

8 There is the gun that was seized in the case was
9 not matched, there's no direct evidence or indirect
10 evidence that he committed this murder. There's no
11 pistol evidence that was located at his house or his
12 vehicle or any other place that would indicate that
13 he is guilty of this murder. As a matter of fact, the
14 -- all the testimony in the case at this point was that
15 they had a good relationship, Roselyn and Vincent Shivers,
16 so at this point you -- you're merely just speculating
17 as to his guilt and mere speculation is not enough.

18 So we'd ask the Court to consider a directed verdict
19 in the case.

20 THE COURT: Okay. Let me hear from the State.

21 MS. MAYES: Yes, Your Honor.

22 And in this set of circumstances, of course, the
23 evidence is viewed in the light most favorable to the
24 State. In addition, there has been case law repeatedly
25 which has held that if there is any direct evidence,

1 any direct evidence, or any substantial circumstantial
2 evidence reasonably tending to prove the guilt of the
3 accused, then the case is properly submitted to the
4 jury, and that's citing State vs. Brannon, as well as
5 State vs. Kelsey. Kelsey is 502 S.E.2nd 63, 1998.
6 Brannon is 379 S.C. 487, 2008.

7 And, again, here as also noted in Brannon, as well
8 as in State vs. Williams, 303 S.C. 274, 1991, when ruling
9 on a motion for directed verdict, the trial court is
10 concerned with the existence or nonexistence of evidence
11 and not its weight.

12 Here, Your Honor, there is substantial
13 circumstantial evidence, substantial circumstantial
14 evidence, that forms a link to the chain and that begins,
15 of course, with his unexplained, unaccounted for trip to
16 Canada, which prompted his boss and coworkers to seek a
17 welfare check. And flight alone is not what the State
18 is relying on. Flight is one factor. It is one link in
19 the chain.

20 But beyond that, Your Honor, she is found killed
21 in the master bedroom of their home. We have presented
22 evidence that the last communication between the parties
23 was a text from him saying that he was on his way. We
24 have presented evidence that the victim had no other
25 ingoing or outgoing calls after receiving communications

1 with her son, Tommy, at 6:23, I believe that is, and she
2 was alive at that time. After responding through text
3 messages to her son, she had invited her son and the
4 family to come stay with them during the course of the
5 hurricane and then by 10:15 AM the next morning they
6 cannot get her on the phone. She misses every call and
7 she misses every text message after that and we were able
8 to establish that those text messages were unread.

9 That same morning at 8:04 AM he is seen on videotape
10 at Circle K, St. Andrews Road, leaving the area, cuts his
11 phone off within two minutes according to testimony, and
12 then is next accounted for in the state of New York the
13 next day.

14 And so, Your Honor, in light of all of that, it
15 certainly amounts to substantial circumstantial evidence.

16 In addition, we have the ammunition found throughout
17 his home which matches the ammunition, being the seven
18 casings, spent casings, found around the victim's body,
19 the HPR 45 auto, and then also five rounds of that same
20 ammunition were in a firearm recovered from his vehicle
21 once he was arrested in Canada.

22 In addition, Your Honor, we have the purchase of
23 the airline ticket to London. Again, unexplained and
24 unaccounted for according to his coworkers and those who
25 knew him and associated with him.

1 All of that, Your Honor, certainly amounts to
2 substantial circumstantial evidence.

3 Now as to any direct evidence, there's been the
4 testimony of Detective Constable Jesse Dean of the
5 Toronto Police Services that he heard directly from the
6 defendant's mouth the statement that he had two guns in
7 the vehicle and "I was gonna eat one in Niagara Falls for
8 what I'd done". That evidence certainly goes to weight,
9 not admissibility, but that is direct evidence directly
10 from him that the State maintains is a state of mind
11 statement, a statement of consciousness of guilt, and,
12 Your Honor, that would amount to direct evidence.

13 So looking at the case law, State vs. Brannon,
14 State vs. Kelsey, we have certainly met the burden to
15 establish our case with direct evidence and substantial
16 circumstantial evidence and should properly go to the
17 jury at this time.

18 THE COURT: Anything else?

19 MR. SWERLING: Yes, Judge. I'd just like to respond
20 briefly.

21 I mean, our position is there really is no evidence
22 linking Vincent Shivers to the killing of Roselyn Shivers
23 {sic}. At this point what we're talking about is merely
24 rising to a level of speculation and conjecture. There's
25 not -- the State talks about direct evidence. Well, you

1 have to -- as far as the statement that was made in
2 Canada, you have to prove the case other than through a
3 statement. You have to make -- you have to prove the
4 case -- I can't remember -- (unintelligible) -- which is
5 separate and apart from the statement itself.

6 And in addition to that, they really haven't offered
7 any evidence that he himself actually did any of the
8 shooting of Roselyn Cedeno. I can't think of any
9 evidence in the case that ties him to that -- to the
10 killing in that case. And I apologize. I just --

11 THE COURT: That's okay.

12 MR. SWERLING: Basically that's what I wanted to
13 say.

14 THE COURT: Well, I'm gonna tell you, Mr. Swerling,
15 I'm gonna deny your motion, and this is why. Because
16 while it's mainly circumstantial, I think it's reasonable
17 links and it's up for a jury to decide what they want to
18 do, but he -- he goes reported missing, he fills up, he
19 cuts off his phone, he travels all the way to Canada, he
20 buys luggage, nobody hears from him. The statement that
21 he gave that I ruled was voluntary is also included in
22 there and, you know, ammunition is found in his car.

23 I'm gonna let the jury decide, okay?

24 MR. SWERLING: Yes, Your Honor.

25 THE COURT: Okay. Now with that said, Mr. Shivers,

1 I talked to you on Friday and I went over your Fifth
2 Amendment rights and I told you that no person shall be
3 compelled in any criminal case to be a witness against
4 himself. I told you that if you decided not to testify
5 that I would tell the jury that they could not hold it
6 against you. They can't even talk about it in the jury
7 room.

8 I also told you that if you did decide to testify
9 that you would be subject to the same examination and
10 cross as any other witness. I think we even talked about
11 your criminal convictions. I don't believe there were
12 any that the State was going to use against you should
13 you decide to testify, but this decision must be freely
14 and voluntarily and intelligently made by you.

15 I read you all these rights and I'll be glad to
16 read them to you again if you want me to. I gave you
17 the weekend to talk to your lawyers. You've got three
18 great lawyers over there, so maybe they could give you
19 some advise.

20 Now at this time I'm going to ask you do you need
21 me to read these rights to testify to you again?

22 THE DEFENDANT: I just want to ask my attorney one
23 quick question.

24 THE COURT: Absolutely.

25 (Discussion between the defendant and his counsel.)

1 THE DEFENDANT: I don't want to testify.

2 THE COURT: Excuse me?

3 THE DEFENDANT: I am not going to testify.

4 THE COURT: You are not going to testify.

5 All right. Do I need to give you any -- you've had
6 enough time to talk to your lawyers? Do I need to give
7 you any more time?

8 THE DEFENDANT: That's my decision.

9 THE COURT: Okay. All right. Thank you.

10 All right. So let me ask the defense, do you have
11 any witnesses?

12 MR. SWERLING: Your Honor, we have one witness who
13 came in from Louisiana and he's got a flight out tonight.
14 I don't anticipate him to be long, but just would ask the
15 Court if we could go forward since he's got a flight out
16 tonight.

17 THE COURT: Okay. We'll --

18 MS. MAYES: We're good with that.

19 THE COURT: If the lawyers don't mind, I'd like to
20 do that.

21 And then how about closing and me charging in the
22 morning? Does that suit everybody?

23 MS. MAYES: It does, Your Honor.

24 MR. SWERLING: It does with me.

25 THE COURT: Perfect.

1 Okay. Let's bring the jury back in.

2 And let me ask the lawyers, have you had time to
3 look over my jury charges?

4 MR. SWERLING: I have, yes. I don't see any major
5 objections.

6 MS. MAYES: And, Judge, we'll e-mail you tomorrow
7 if there are any exceptions, but we will go along with
8 the standard charges.

9 THE COURT: Okay. Because I'd like to as soon
10 as we finish closing, if y'all would like to have a
11 quick break, and then go straight into charges.

12 MR. SWERLING: Your Honor, the only thing is that
13 I -- the right to remain silent, I'd like to strike that
14 language out. We did the same thing in the other case.

15 THE COURT: And we anticipated that and we already
16 deleted it.

17 MR. SWERLING: Okay.

18 (Whereupon, the jury return to the courtroom at
19 5:07 PM.)

20 THE COURT: All right, Mr. Foreman. Is the jury
21 ready?

22 FOREPERSON: We are.

23 THE COURT: All right. Let me -- just so I can kind
24 of keep you updated, I think we've got one more witness
25 and then I'm probably gonna let you go for the night and